



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 95 of 2019

- i. Al-Karam Feeds (SMC- Private) Ltd
  - ii. Muhammad Tanveer, Subscriber/Director Al-Karam Feeds
- ...Appellants

Versus

- i. Registrar of Companies
  - ii. Muhammad Ishaq Saif
- ...Respondents

Date of hearing: 17/09/2020

### Present:

#### For the Appellant:

Mr. Ashraf Tiwana, Advocate High Court

#### For the Respondent No.1:

- i. Mr. Saeed Ullah, Additional Registrar (Corporatization & Compliance Department)
- ii. Ms. Saila Jamshed, Joint Director (Corporatization & Compliance Department)

#### For the Respondent No 2:

- i. Mr. Kashif Rafique Rajwana, Rajwana & Rajwana Advocates
- ii. Mr. Malik Adil Shabbir Khokhar, Rajwana & Rajwana Advocates
- iii. Mr. Muhammad Zeeshan, Rajwana & Rajwana Advocates

### ORDER

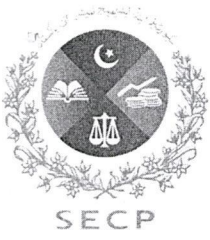
1. This Order is passed in the matter of Appeal No.95 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (the SECP Act)



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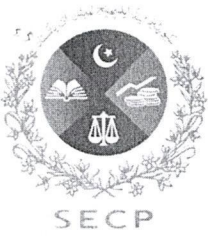
against the order dated 08/11/19 (the Impugned Order) passed by the Registrar of Companies (the Respondent No.1).

2. The brief facts of the case are that an application was filed by Mr. Muhammad Ishaq (the Respondent No.2) on 02/04/19 requesting the Respondent No.1 to issue direction to rectify the name of Al-Karam Feeds (SMC-Private) Limited (the Appellant No.1) under section 11 of the Companies Act, 2017 (the Companies Act). The Respondent No.2 and one other Mr. Muhammad Tanvir (the Appellant No.2) registered a firm by the name of "Al-Karam Feed Mills" (the Firm) under the Partnership Act, 1932 (the Partnership Act) on 12/04/13. Both the Respondent No.2 and the Appellant were equal partners in the Firm. The Respondent No.2, however, alleged that the Appellant No.2 in violation of the agreement registered a company by the name of "M/s. Al-Karam Feeds (SMC-Private) Limited" on 06/12/18 which is similar to the name of the Firm and the Appellant is also using the brand name of the Firm. Therefore, Respondent No.2 requested the Commission to direct the Appellant to rectify its name in terms of section 11 of the Companies Act. In terms of proviso to section 11(1)(b) of the Companies Act, an opportunity of representation was provided to the chief executive of the Appellant vide letter dated 19/06/19 to appear before the Respondent No.2 on 22/07/19. Thereafter, various dates were fixed for hearing, however, no one appeared. Subsequently, hearing letters were sent at the personal residential address of the Appellant No.2, which were also returned undelivered. Finally, a letter dated 23/09/19 was delivered to the Appellant No.2 through dispatch rider at the registered office address, in response to which he appointed M/s. Meer and Hasan, legal advisors to represent the Appellant No.2 at the hearing of the Commission. On request of the Appellant No.2's legal advisors, a couple of extensions were further granted to provide sufficient time to the legal advisors of the Appellant to prepare and file their response. Finally, the date of hearing was fixed on 1/11/19. However, the legal advisors of the Appellant No.2 once again requested for further extension. The matter had been delayed for quite some time and the Appellant No.2 and his legal advisors had been given ample time to submit their response by Respondent No.1. As no substantial response had been received, except several requests for adjournments, therefore, no further extension was granted and an ex-parte decision was passed by the Respondent No.1 based on the record available with the Commission and on its merits.



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3. The Respondent No.1 held that in view of record provided by Respondent No.2, it is evident that while seeking reservation of name and subsequent registration of the Appellant No.1, Appellant No.2 furnished false and incorrect information by failing to disclose that he was a partner in the Firm having similar name which attracts proviso (b) of section 11(1) of the Companies Act.
4. The Appellants have preferred the appeal *inter alia* on the following grounds:
  - a) The Impugned Order is an ex-parte order and has been passed in absence of the Appellants without hearing their point of view which is in violation of the principles of natural justice specifically Audi Alteram Parterm, i.e.no one shall be condemned unheard. Section 11 of the Companies Act under which the Impugned Order has been passed specifically requires that the Registrar shall pass the direction to change its name after providing an opportunity to the company to make a representation against the proposed direction. The Impugned Order is, therefore, liable to be set aside being in contravention of a specific statutory requirement.
  - b) The Respondent No.2 had approached the Respondent No.1 with unclean hands and provided false, fabricated and incomplete information. In the Complaint, the Respondent No.2 has alleged that the incorporation of the Appellant No.1 or its name was in violation of the Partnership Deed between the parties. There was no clause in the Partnership Deed which prohibited the incorporation of the Appellant No.1 by Appellant No.2. The Complaint alleges that the incorporation of Appellant No.1 was in violation of Article 14 of the Partnership Deed in Urdu dated 01/03/13 (the Partnership Deed in Urdu). However, the Partnership Deed in English dated 10/04/13 (the Partnership Deed in English) did not contain Article 14 and it is the Partnership Deed in English which was registered with the Registrar of Firms. Therefore, the Partnership Deed in Urdu is not the Registered Deed which created the Partnership Firm and is, therefore, irrelevant. In any case, the Partnership Deed in Urdu only prohibits use of company or logo name by a "Partner who voluntarily leaves the Partnership". The Appellant No.2 did not leave the Partnership, instead the Respondent No.2 unilaterally dissolved the Partnership and has taken over the Firm and its business and assets. Therefore, there was no violation of Article 14 of even the Partnership Deed in Urdu. Furthermore, the Respondent



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No.2 in the Complaint has averred that Appellant No.1 was incorporated in violation of the Dissolution Agreement/Settlement Agreement (the Dissolution Agreement) between the parties. The Appellant No.1 was incorporated on 06/12/18 many months before the execution of the Dissolution Agreement on 21/02/19 and Article 9 contained in the Dissolution Agreement was to restrict the Appellant No.1 from starting a new business with the exact same name of the Dissolved Firm, i.e. "Al-Karam Feed Mills" or same logo. The Appellant No.1 is different from the name of the Dissolved Firm, i.e. Al-Karam Feeds (SMC-Pvt) Ltd and not "Al-Karam Feed Mills". Furthermore, the Respondent No.2 served a written Dissolution Notice dated 03/10/18 on the Appellant No.2 ending the partnership. It must be noted that partnership at will comes to an end when a partner serves a notice to the other partners to end the partnership. Therefore, the incorporation of the Appellant No.1 with its present name is not in contravention of any agreement between the parties and the Respondent No.2 had no cause of action against the Appellants for requiring change of name of Appellant No.1. The Respondent No.2 has also concealed the fact that he himself has incorporated a private company with the name of "Al-Karam Wanda (Pvt.) Ltd" and that during the subsistence of partnership between the parties, he was operating a parallel business under the name of "Al Karam Feed Industries". The Complaint, therefore, is an afterthought and based on malice to punish the Appellant No.2 after the frauds committed by him were discovered.

5. The Respondent No.1 rebutted the arguments of the Appellants *inter alia* on the following grounds:
- a) As per Article 14 of the Partnership Deed in Urdu, the partners were barred from using the name of the business or its products names. Furthermore, as per Article 9 of the Dissolution Agreement, the Appellant No.2 was barred from using the company name and logo. The Appellant No.2 has now filed the Partnership deed in English duly signed by the Appellant No.2 and Respondent No.2 which is silent regarding the use of the company name or its product names, however, the Partnership Deed in English was never laid before the Respondent No.1 during the proceedings.
  - b) The Impugned Order was passed in terms of section 11(1)(b) in true letter and spirit of the Companies Act. Sufficient opportunities were provided to Appellant No.2 but no response



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was received from the Appellant No.2 or his legal counsel, therefore, the Respondent No.2 was left with no other option but to conclude the matter on the basis of facts available on record.

6. The Respondent No.2 rebutted the arguments of the Appellants *inter alia* on the following grounds:

- a) The Appellant No.2 could not have registered Appellant No.1 having identical name as of the Firm especially when the partnership was in existence. Furthermore, the Appellant No.1 was registered before the Dissolution Agreement came into force which was in violation of the Partnership Agreement. The Appellant No.2, therefore, got the name identical to that of the Firm registered by misrepresentation and furnishing false information to the Respondent No.1. Moreover, Al Karam Wanda (Pvt.) Ltd is different from the Firm name and Respondent No.2 has not been restrained from using the said name under the Dissolution Agreement as he has purchased the shares of the Appellant No.2 in the said business of the Firm. Pursuant to the Dissolution Agreement, the Appellant No.2 has without any coercion opted to leave the business of the Firm after obtaining an amount of Rs 50 million. Furthermore, all disputes related to the partnership were settled and the Appellant No.2 also went to the banks to get the joint accounts closed which clearly depicts that the Dissolution Agreement is a concluded contract. It is pertinent to mention that in the existing circumstances where one of the partner quits, he shall be dealt as 'Outgoing Partner' by virtue of section 36 of the Partnership Deed. Section 36 of the Partnership Act states that the Appellant No.2 can neither use the Firm name nor can he carry business similar to that of the Firm/Partnership Concern.
- b) Section 11 of the Companies Act empowers the Respondent No.1 to direct the company for change of name when the Appellant No.2 never informed the Respondent No.1 that he was partner in the Firm having similar name and business and, by not disclosing the said fact, the Appellant No.2 has not only concealed basic information but rather misled and misrepresented.

7. We have heard the parties i.e. the Appellants and the Respondents and reviewed the Partnership Deed in English duly registered with the Registrar of Companies on 12/04/13 which does not prohibit the



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Appellant No.2 from using the exact name of the Firm. Furthermore, there is no evidence provided in the Partnership Deed in Urdu, being duly registered with the Registrar of Firms, and Article 14 of the said Partnership Deed only prohibits the Appellant No.2 from using the exact name. We are also of the view that the Dissolution Agreement was executed after Appellant No.1 had already been registered on 06/12/18 yet the Respondent No.2 did not raise any objection at the time. Moreover, Article 9 of the Dissolution Agreement also only prohibits Appellant No.1 from using the exact name. It is evident that the current name of Appellant No.1 is not exactly the same as that of the Firm. We are of the view, therefore, that there was no fraud or misrepresentation pertaining to the name of Appellant No.1 as alleged by the Respondents and the incorporation of Appellant No.1 with its present name is not in contravention of any agreement between the parties.

8. In view of the foregoing, the Impugned Order is set aside with no order as to costs.

**Sadia Khan**

Commissioner (SCD-S&ED)

**Farrukh Sabzwari**

Commissioner (SCD-PRDD)

Announced on: **30 DEC 2020**