

Oct 30, 2001 SEC imposes fine on two practicing Chartered Accountants for professional misconduct and willful default of the provisions of section 257 of the Companies Ordinance, 1984.

The Securities and Exchange Commission of Pakistan has imposed fines on two practicing Chartered Accountants for professional misconduct and willful default of the provisions of the Section 257 of the Companies Ordinance. They are Mr. Mahmood Ali Khan, FCA of M/S Mahmood Zuberi & Co, and Mr. Nasim Akhtar, ACA of M/S Nasim Akhtar & Company of Karachi.

Mr. Rashid Sadiq, Executive Director, Enforcement Division, SECP, besides imposing the maximum fine provided under the law has also referred the cases of the two auditors to the Institute of Chartered Accountants of Pakistan (ICAP) the sole regulatory body of Chartered Accountants for investigation and suitable action against the two firms for professional misconduct, unethical practices and gross violation of provisions of Chartered Accountants Ordinance 1961. While referring these cases to ICAP, ED (Enforcement) observed "Accounting profession is known world over for high ethical norms. A high standard of care, duty, efficiency, self-discipline and integrity is expected from the members of this noble profession. However, it is perturbing that members of this profession in Pakistan are not following the standards of ethics laid down by ICAP and the provisions of the Ordinance. It is responsibility of ICAP to ensure that its members strictly observe the provisions of the Code of Ethics and the requirements of the Ordinance applicable to them in order to protect the independence and dignity of the profession."

The facts leading to this case, are that M/S Iqbal Patel & Co., Chartered Accountants were appointed as auditors of M/S Delta Insurance Company Limited for the year ended on December 31, 2000 in the Annual General meeting of the Company held on July 29, 2000. However, during mid term, they were removed and Mr. Mahmood Ali Khan, sole proprietor of M/S Mahmood Zuberi and Co., Chartered Accountants was appointed as auditor of the Company who has accepted the appointment in violation of the provisions of the Code of Ethics for Chartered Accountants prescribed by the Institute of Chartered Accountants of Pakistan which requires that in case of removal of an existing auditor by the proprietors of the business before completion of audit and submission of his report "the proposed auditor in practice should not accept the offer without clearance from the Institute". ICAP vide its letters dated June 14, 2001 and June 21, 2001 has restrained Mr. Mahmood Ali Khan to take up the audit of the Company for the year ended December 31, 2000 until advised to do so. However, in disregard to the assurance given to ICAP, he took up the audit of accounts of the Company. The Commission through its letter dated June 27, 2001 has directed Mr. Mahmood Ali Khan, FCA to clarify his position viz-a-viz ICAP's letter. He was also advised to send a signed copy of the audit report along with annual accounts of the Company for the year ended December 31, 2000. No response was received from Mr. Mahmood Ali Khan. Another letter was written on July 03, 2001 to

remind him to reply to the Commission's aforesaid letter, however, he still preferred not to respond.

Meanwhile, the Company filed with the Commission the audited annual accounts for the year ended December 31, 2000. The examination of the aforesaid accounts indicated that the audit report to the members attached to the balance sheet and profit and loss account has been signed by one Mr. Nasim Akhtar, B.Com. A.C.A, on behalf of M/S Mahmood Zuberi & Co., Chartered Accountants. On an enquiry from ICAP about particulars of M/S Mahmood Zuberi & Co., the Commission was informed that Mr. Mahmood Ali Khan, FCA is a sole proprietor of the said firm since March 18, 1969. It appeared Prima facie, that the audit report was signed by Mr. Nasim Akhtar with concurrence of Mr. Mahmood Ali Khan in contravention of the provisions of Sub-section (1) of Section 257 of the Companies Ordinance, 1984 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 auditors' report".

3. In view of the aforesaid violation, a show cause notice dated September 06, 2001 was served on Mr. Mahmood Ali Khan "to clarify in writing, within seven days and to appear in person or through an authorized representative to explain as to why penalty may not be imposed on him as provided under Sub-section (1) of Section 260 read with Section 476 of the Ordinance and he may not be prosecuted under Sub-section (2) of Section 260 of the Ordinance for the aforesaid contravention."

4. In response to the aforesaid show cause notice, Mr. Mahmood Ali Khan, FCA vide his letter dated September 12, 2001 stated that:

I cannot close my office during my absence from the Country. In such situation, I should authorize any Chartered Accountant to look after my office affairs and to sign the balance sheet.

Partnership firm can be formed verbally at any time and at will.

The Registrar, Joint Stock Companies issued a certified copy of Form -29 for our appointment as auditors, as such there is no violation on our part.

We held out the assurance that we would not take up the audit till we are advised by the Institute as is clear from the Institute's letter dated June 14, 2001, however ICAP has not declared our appointment as illegal. It is true that we took up the audit of accounts of the Company in disregard to the assurance given to ICAP.

It is wrong that Mr. Nasim Akhtar was not a partner. He can be made partner for specific purpose at any time for any period. Mr. Nasim Akhtar is quite competent person to become partner with us.

As the Company was dealing with all the matters, therefore, we did not respond to the Commission's letter. We requested them to answer it properly and perhaps they did.

We are ready to give up this audit in favor of previous auditors, if we are made free from charges and issues against us.

The reply received from Mr. Mahmood was found unsatisfactory. Consequently the case was heard at Karachi. The order said that it would be beneficial to discuss the issues raised by him before deciding this case. With regard to the authority to any Chartered Accountant to look after his office and sign balance sheet on his behalf, the provisions of law are quite clear that only a Chartered Accountant and in the case of appointment of a firm, any of its partners can sign the report and other documents. As such this argument is devoid of any force. The issue of authorizing a Chartered Accountant to look after the office is not relevant in this case and as such is not discussed here. There is no doubt about the argument that partnership firm can be formed at any time, however, only those partners can sign the report and balance sheet who according to the provisions of Sub-Section (2) of Section 252 of the Ordinance, are partners in the firm at the time of appointment of partnership firm as auditors. Clause (c) of Sub-section (1) of Section 205 of the Ordinance requires that in the case of appointment of a firm, the full name, address, and nationality of each partner, and the date on which each become partner shall be entered in the register kept for the purpose. It is also obligatory on the auditors that within a period of ten days of his appointment or of any change therein, as the case may be, the auditors shall furnish to the company the aforesaid particulars and the Company shall file with the Registrar, the said particulars on Form 29 within prescribed time period.

After taking into consideration all the relevant facts and circumstances, it is abundantly clear that Mr. Mahmood Ali Khan has contravened the provisions of Sub-Section (1) of Section 257 by allowing Mr. Nasim Akhtar who was not appointed as auditor to sign the audit report on the annual accounts of the Company. The auditors' report, therefore, is made otherwise than in conformity with the requirement of the aforesaid provisions of law. The default is willful and Mr. Mahmood Ali Khan, the sole proprietor of M/S Mahmood Zuberi & Co. and Mr. Nasim Akhtar the sole proprietor of M/S Nasim Akhtar & Co. has made themselves liable for punishment. Therefore, a fine of Rs 2,000 (Rupees two thousand) each has been imposed on Mr. Mahmood Ali Khan, FCA and Mr. Nasim Akhtar for the willful default under Sub-section (1) of Section 260 read with Section 476 of the Ordinance. Further, during the examination of this case, number of important

matters have come to notice due to which decision regarding the role of auditors in terms of Sub-section (2) of Section 260 of the Ordinance shall be decided by the Commission through a separate order, after giving them an opportunity of personal hearing.

Mr. Mahmood Ali Khan and Mr Nasim Akhtar Chartered Accountants are also guilty of professional misconduct in terms of Clause 12 of Part 1 and Clause 3 of Part 4 of Schedule I annexed to the Chartered Accountants Ordinance, 1961. The Commission is, therefore, sending a copy of this Order to ICAP for taking appropriate action against Mr. Mahmood Ali Khan and Mr. Nasim Akhtar under the provisions of the Chartered Accountants Ordinance, 1961