

Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: W.P. No.77742/2023

**M/s Future Vision Advertising (Private) Limited.
Vs.
Federation of Pakistan etc.**

JUDGMENT

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| Date of hearing: | 03.06.2024. |
| Petitioners by | Mr. Faisal Rasheed Ghouri, Advocate. |
| Respondent No.1 by: | Syed Sajjad Haider Rizvi, Assistant Attorney General for Pakistan. |
| Respondents No.2 to 6 by: | Mr. Ruman Bilal, Advocate. |

ABID AZIZ SHEIKH, J. Through this constitutional petition, the petitioner has challenged the show cause notice dated 31.05.2023, issued under Section 257 of the Companies Act, 2017 (**Act**) by the Securities and Exchange Commission of Pakistan (**Commission**) and order dated 17.11.2023 for the appointment of Inspectors to investigate the affairs of the petitioner-company.

2. The relevant facts are that the petitioner-company was issued show cause notice dated 31.05.2023 (**impugned show cause notice**) to the effect that a complaint was received by the Commission and as per information as available on the website of the Company, *prima-facie*, Company is engaged in illegal deposit taking/investment activities in the guise of SMD

(Visual LED Screens) marketing. It was also recorded in the impugned show cause notice that the investors/prospective investors/general public are committed fixed monthly returns in exchange for their funds which are used to finance purchase and installation of SMDs which are claimed to be generating return for the Company through marketing and advertising thereon by third parties. It is also stated in the impugned show cause notice that said state of affairs *prima-facie* suggests that Company is engaged in illegal activities in violation of section 84 of the Act, which requires investigation into the affairs of the Company, hence, impugned show cause notice was issued to the petitioner-Company that why action should not be initiated under Section 257 of the Act. The petitioner being aggrieved filed Writ Petition No.44455/2023, which was disposed of being not pressed vide order dated 27.06.2023, however, the petitioner-Company was allowed to raise its legal objection before the Commission, which was to be decided at the first instance. Consequently, through impugned order dated 17.11.2023 (**impugned order**), the Commission has decided the impugned show cause notice on legal as well as factual grounds and appointed a team of Officers of Commission as Inspectors, to investigate into the affairs of the Company, hence, this petition.

3. The learned counsel for the petitioner submits that impugned show cause notice was issued under Section 257 of the Act on a complaint of an individual who is neither shareholder nor member of the Company. He submits that under Section 256 read with Section 257 of the Act, the investigation can only be initiated on a complaint by Shareholder or member of the Company or order of the Court. He further submits that there is no independent or *suo-moto* power available with the Commission to appoint Inspectors under Section 257 of the Act. He place reliance on "TARIQ IQBAL MALIK Vs. Messrs MULTIPLIERZ GROUP PVT. LTD. and 4 others" (**2022 CLD 468**) to argue that provisions of Sections 256 & 257 of the Act being intertwined, complaint must be on behalf of shareholder or member of the Company. He further submits that when the Commission formed its opinion under Section 257(1)(b) of the Act, it is also required to confront the material on the basis of which the said opinion was formed. He placed reliance on "Competition Commission of Pakistan and others Vs. Dalda Foods Limited, Karachi" (**2023 SCMR 1991**).

4. The learned counsel for the respondents, on the other hand, submits that not only complaint of various investors was received by the Commission but the impugned show cause notice was also issued on the basis of information available on

the website of the petitioner-Company, which *prima-facie*, shows that the petitioner-Company is engaged in illegal deposit taking/investment activities in the guise of SMD marketing. Submits that under section 257(1)(b) of the Act, the Commission can appoint Inspectors after show cause notice and further the material on the basis of which the opinion was formed was duly confronted to the petitioner in the impugned show cause notice.

5. Arguments heard. Record perused. Admittedly the petitioner was issued impugned show cause notice and for convenience para No.1 thereof is reproduced hereunder:-

"WHEREAS, a complaint was received by the Commission, and information as available on the website of the Future Vision Advertising (Pvt.) Limited (the Company), the Commission had observed that the Company prima facie is engaged in illegal deposit taking/investment activities in the guise of SMD (Visual LED Screens) marketing. The investors/prospective investors/general public are committed fixed monthly returns in exchange for their funds which are used to finance purchase and installation of SMDs which are claimed to be generating return for the Company through marketing and advertising thereon by third parties".

(Emphasis supplied)

From the above show cause notice, it is evident that the Commission issued show cause notice not merely on the basis of a complaint but also on the basis of information, available on website of the petitioner-Company and after considering the

said record, the Commission, *prima-facie*, observed that the petitioner-Company is engaged in illegal deposit taking/investment activities in the guise of SMD marketing. The legal question requires determination in this case is that whether on the basis of a complaint and record available on the website, the Commission could issue show cause notice and initiate proceedings under Section 257 of the Act through impugned order.

6. To answer this legal question, it is expedient to reproduce Sections 256 & 257 of the Act as under:-

256. Investigation into affairs of Company. (1)

Where the Commission is of the opinion, that it is necessary to investigate into the affairs of a Company—

- (a) *on the application of the members holding not less than one tenth of the total voting power in a Company having share capital;*
- (b) *on the application of not less than one tenth of the total members of a company not having share capital;*
- (c) *on the receipt of a report under Sub-Section (5) of Section 221 or on the report by the Registrar under sub-section (6) of Section 254;*

it may order an investigation into the affairs of the Company and appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Commission may direct.

Provided that before making an order of investigation, the Commission shall give the Company an opportunity of being heard.

(2) *While appointing an Inspector under sub-section (1), the Commission may define the scope of the investigation, the period to which it is to extend or any other matter connected or incidental to the investigation.*

(3) An application by members of a company under clause (a) or (b) of sub-section (1) shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring the investigation.

(4) The Commission may, before appointing an inspector, require the applicants to give such security for payment of the costs of the investigation as the Commission may specify.

257. Investigation of company's affairs in other cases. (1) Without prejudice to its power under section 256, the Commission—

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct, if—

(i) the company, by a special resolution, or

(ii) the Court, by order,

declares that the affairs of the company ought to be investigated; and

(b) may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct if in its opinion there are circumstances suggesting—

(i) that the business of the company is being or has been conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its

- members or have been carrying on unauthorized business; or*
- (iii) *that the affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return; or*
 - (iv) *that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or*
 - (v) *that any share of the company have been allotted for inadequate consideration; or*
 - (vi) *that the affairs or the company are not being managed in accordance with sound business principles or prudent commercial practices; or*
 - (vii) *that the financial position of the company is such as to endanger its solvency:*

Provided that, before making an order under clause (b), the Commission shall give the company an opportunity of being heard.

- (2) *While appointing an inspector under sub-section (1), the Commission may define the scope of the investigation whether as respects the matters or the period to which it is to extend or otherwise.*

7. Plain reading of Section 256 and 257 of the Act shows that under aforesaid provisions the investigation into the affairs of the Company can be ordered by the Commission in five different situations. Firstly under Section 256(1)(a) & (b) of the Act, on the application of the members holding not less than one tenth of the total voting power in a Company having share capital or on the application of members not less than one tenth of the total members of a Company not having share

capital, where the Commission is of the opinion, that it is necessary to investigate into the affairs of a Company, it may order to investigate and appoint one or more persons as Inspectors to investigate and report thereon in such manner as the Commission may direct. Secondly, under Section 256(1)(c) of the Act, on the receipt of a report under Section 221(5) of the Act by the authorized Officer while inspecting books of accounts and books of papers of the Company or under Section 254(6) of the Act by the Registrar while exercising his power to call for information. However, the word “may” indicates that the aforesaid appointments of Inspectors under Section 256(1) of the Act are discretionary with the Commission and subject to its opinion that investigation is necessary. The provision of Section 257 of the Act relates to investigation of Company’s affairs in other cases and the said provision is without prejudice to the power of the Commission under Section 256 of the Act. The third and fourth situation is where under Section 257(1)(a)(i) of the Act, the Company by special resolution or under Section 257(1)(a)(ii) of the Act, the Court by order declares that the affairs of the Company ought to be investigated, the Commission shall appoint one or more competent persons as Inspectors to investigate the affairs of the Company and to report thereon in such manner as the Commission may direct. The word “shall” used for Section

257(1)(a)(i) & (ii) of the Act means that here the Commission has no discretion to form an opinion, rather it is bound to appoint the Inspectors if there is a special resolution by the Company or order of the Court. However, it may prescribe the manner in which the affairs of the Company will be investigated. Fifth situation is under Section 257(1)(b) of the Act, where again by use of word “may”, the discretion made available with the Commission to appoint one or more persons as Inspectors to investigate the affairs of the Company and to report thereon if in the opinion of the Commission, there are circumstances suggesting that, the business of the Company is being or has been conducted with intent to defraud its creditors, members or any other person for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose from the persons who founded the Company or its management guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members from carrying on unauthorized business or the affairs of the company have been conducted to deprive the members of reasonable return or members are not given information or shares of the company have been allotted for inadequate consideration or the Company’s affairs are not managed in sound business principles or prudent commercial practices or

the financial position of the company is such as to endanger its solvency.

8. From the above, it is manifest that besides upon application or report under section 256(1) of the Act, there is independent power available with the Commission under Section 257(1)(b) of the Act to form its opinion on the basis of circumstances suggesting therein for appointment of Inspectors. However, before making any order under Section 257(1)(b) or 256(1) of the Act, the Commission is required to give Company an opportunity of being heard but no such opportunity of statutory show cause is required, while appointing Inspectors under Section 257(1)(b) of the Act on the declaration of Court order or by special resolution of a Company.

9. The circumstances of present case when examined in the context of above legal position, it is noted that impugned show cause notice is not only referring to a complaint but also based upon information available on the website of the petitioner-Company to the effect that company is engaged in illegal deposit taking/investment activities in the guise of SMD marketing. No doubt, under Section 256(1)(a) & (b) of the Act, the complaint can only be filed by the members holding not less than one tenth of the total voting power or total membership, as also correctly held by this Court in case of "Tariq Iqbal Malik" supra, however, under Section 257(1)(b) of the Act, the

Commission has independent powers to appoint Inspectors after show cause notice if in its opinion there are circumstances suggesting various situations mentioned in Sub-clause (i) to (vii) of Section Para 257(1)(b) of the Act *ibid*. In this case, the allegations against the petitioner-Company that it is engaged in illegal deposit taking/investment activities in the guise of SMD marketing from general public, squarely falls under the scope of section 257(1)(b) of the Act, therefore, it cannot be said that opinion was not correctly formed by the Commission or show cause notice or impugned order passed by the Commission are without jurisdiction or not backed by law. Further, impugned show cause notice is not only requirement of rule of natural justice but same is also the statutory requirement under proviso (ii) of Section 257 of the Act, therefore, it cannot be said that same is without jurisdiction.

10. The next argument of the learned counsel for the petitioner that the Commission has no independent power to appoint Inspectors but it can only make appointments on the application of the members, receipt of report under Section 221(5) and 254(6) of the Act or on Court order or Company special resolution, is also misconceived. The provision of Section 257(1) of the Act commences with the expression "without prejudice to its power under Section 256, the Commission". It is well settled law that when such expression

is used, it means that anything contained in the provision following this expression is not intended to cut down generality of the meaning of the preceding provision. (Refer “P Ramanatha Aiyar’s Advance Law Lexicon, Volume 4”). This means that power of the Commission under Section 257 of the Act will not curtail the power of Commission under Section 256 of the Act for the appointment of Inspectors. This legal position is further supported by the fact (as already discussed above) that section 256 of the Act deals with the situations where Inspectors are appointed on the application of the members or report of the authorized Officer or Registrar under Section 221(5) or Section 254 of the Act, whereas under section 257 of the Act, investigation of Company’s affairs is in other cases i.e. on special resolution by Company or the Court order or independent power of the Commission when in its opinion the circumstances suggests appointment of Inspectors.

11. It is pertinent to note that both in Section 256(1) and Section 257(1)(b) of the Act, the Commission is to form an opinion before appointment of Inspectors. However, the said opinion under Section 257(1)(b) of the Act must be based upon circumstances suggesting various situations mentioned in Clauses (i) to (vii) of Section 257(1)(b) of the Act, whereas the formation of opinion under Section 256(1) of the Act is not confined only to circumstances suggested in Clauses (i) to (vii)

of Section 257(1)(b) of the Act *ibid* but Commission has much wide powers to appoint Inspectors if it is necessary to investigate into the affairs of the Company. By using the words "without prejudice to its power under Section 256, the Commission", in Section 257(1) of the Act, the legislation has intentionally not restricted the formation of opinion of Commission under Section 256(1) of the Act only to the circumstances of Clauses (i) to (iv) of Section 257(1)(b) of the Act. Further the use of ";" (Semicolon) before the word "and", in between Sub-Section (1)(a) and sub-Section(1)(b) of Section 257 of the Act, prove that sub-section (1)(a) and (1)(b) of Section 257 of the Act are two independent clauses that are not joined by conjunction. As per "Words and Phrases" *Volume 38B*" "semicolon" is used to separate consecutive phrases or clauses independent of each other grammatically but dependent alike on some word preceding or following. From the above, it is manifest that Section 257(1)(b) of the Act is a separate clause under which a Commission has independent power to appoint the Inspectors to investigate the affairs of the Company if in its opinion there are circumstances suggesting the situation mentioned in Sub-Section (i) to (vii) of Section 257(1)(b) of the Act.

^12. The case of "Competition Commission of Pakistan and others Vs. Dalda Foods Limited, Karachi" relied

upon by the learned counsel for the petitioner relates to the inquiry conducted by the Competition Commission of Pakistan (**CCP**) under section 37 of the Competition Commission Act, 2010 and not appointment of Inspectors under Sections 256 & 257 of the Act by the Commission. Even in said judgment, the Supreme Court maintained the power of CCP to initiate inquiry being a regulator, however, required that the due process of law should be followed and the discretion to form an opinion must be exercised justly, fairly and further the gist of reasons and facts, that prevailed with CCP for initiating inquiry be conveyed to the undertaking/Company. In the present case, the perusal of impugned show cause notice and order, shows that the basis to form an opinion to initiate inquiry by Commission are not only duly conveyed to the petitioner but, *prima-facie*, the said reasons are also cogent, whereby according to information available on website, the petitioner is apparently engaged in illegal deposit taking/investment activities in the guise of SMD marketing. The Supreme Court in "Brothers Steel Ltd. and others Vs. Mian Mirajuddin and 15 others" (**PLD 1995 Supreme Court 320**), while examining the similar power of the Company Bench of this Court under Section 265 in the Companies Ordinance, 1984 (Since repealed), held that full-fledged inquiry in the form of a trial is not required before passing the order or for the appointment of Inspectors and

Court has to only satisfy itself, *prima-facie* on the basis of material placed before it that a case for investigation through Inspectors is called for and it is for the Inspectors to ascertain and determine the truth or otherwise of the allegations during the investigation to be conducted by them. The relevant part of the judgment is reproduced hereunder:-

"We are of the considered view that in proceedings under Section 265 of the Ordinance, full-fledged inquiry in the form of a trial, is not required to be held nor any formal evidence is to be recorded. Needless to observe that before passing the order under Section 265 of the Ordinance, the Court has to only satisfy itself, prima-facie, of course, on the basis of the material placed before it, that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the investigations during the investigation to be conducted by him whereafter, he will submit the report to the concerned Authority".

In the aforesaid case, the Supreme Court upheld the judgment of this Court in "Mian Miraj Din and others Vs. Brothers Steel Mills and others" (**1996 CLC 516**), where same views were recorded.

13. In view of above discussion, this petition being meritless is **dismissed**.

**(Abid Aziz Sheikh)
Judge**

Approved for reporting.

Judge

M. Ajmal

