



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

### Appeal No. 41 of 2013

Mr. Faraz Fazal Sheikh

..... Appellant

Versus

Additional Registrar of Companies, Islamabad  
Securities and Exchange Commission of Pakistan

..... Respondent

### **ORDER**

Date of hearing

03/12/14

#### Present:

#### Appellant:

Mr. Faraz Fazal Sheikh

#### Department representatives:

Mr. Abid Ali Abid, Deputy Registrar



## Securities and Exchange Commission of Pakistan

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1. This order shall dispose of appeal No. 41 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 15/05/13 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that M/s Avalon Homes (Pvt.) Ltd (the "Company") had notified the appointment of Mr. Faraz Fazal Sheikh (the "Appellant") as auditor of the Company, who was an unqualified person, as per information available in Form A made up to 30/09/08 and Form 29 dated 30/09/08.
3. Show Cause Notice dated 05/11/12 ("SCN") was issued to the Appellant for the prima facie violation of section 254(6) of the Companies Ordinance, 1984 (the "Ordinance") as he had been notified as auditor of the Company since its incorporation. The Appellant vide letters dated 05/11/12 and 19/12/12 was asked to explain and clarify as to why penalty as provided in law may not be imposed for acceptance of illegal appointment as an auditor. No reply was received from the Appellant and the Appellant vide letter dated 01/01/13 requested for more time to submit reply. Hearing on the matter was held on 09/01/13 in which the Appellant stated that he had not received the SCN and was provided copy of SCN to argue the case. The Appellant made verbal submissions and a written reply dated 10/01/13 was submitted to the department.
4. The Respondent, dissatisfied with the response of the Appellant, held that the Appellant committed the default willfully and should have acted strictly in accordance with the provision of the law and penalty of Rs.10,000 was imposed on the Appellant.

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5. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant argued that mere mentioning of his name in Form 29 does not imply that he acted as auditor of the Company as there is no consent given by him to act as auditor of the Company. It was further argued that when it came to the notice that his name was mentioned as auditor in Form 29 of the Company, the Company rectified all previous Form 29 and the rectification was accepted by CRO, Islamabad. It was prayed that due to the default being unintentional and inadvertent, the Impugned Order may be set aside by the Appellate Bench.
6. The department representative argued that it was not the mere mentioning on Form A and Form 29 as auditor by the Company. The subject Form A and Form 29, whereby, the Appellant was appointed auditor of the Company has been filed by the Appellant under his letter head which clearly indicates his consent for illegal appointment. Further, as per record, revised/corrected returns have not been acknowledged by the CRO and a reference to the Commission has been sent for appointment of qualified person in terms of section 254(7) of the Ordinance.
7. We have heard the parties. Section 254(6) of the Companies Ordinance has been reproduced for ease of reference:

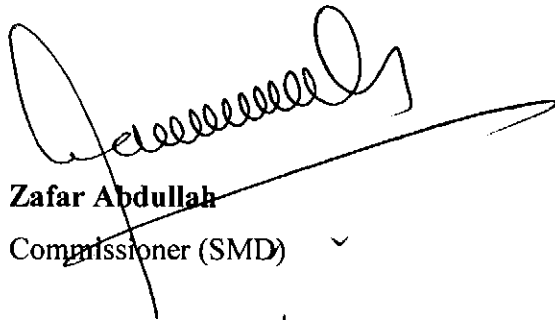
*“A person who, not being qualified to be an auditor of a company, or being or having become subject to any disqualification to act as such, acts as auditor of a company shall be liable to fine which may extend to twenty five thousand rupees.”*



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We have gone through the records of the Company provided by the department. We have observed that Form A and Form 29 of the Company were filed and signed by the Appellant himself. The Appellant has clearly violated section 254(6) of the Ordinance willfully and deliberately. The Respondent has already taken a lenient view by imposing a penalty of Rs. 10,000 instead of the maximum penalty of Rs 25,000 as provided under section 254(6) of the Ordinance.

In view of the above, we do not find any grounds to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

  
**Zafar Abdullah**  
Commissioner (SMD)

  
**Tahir Mahmood**  
Commissioner (CL)

Announced on: 19/12/14