



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 13 of 2013

M/s Climax Engineering Company Limited

..... Appellant

Versus

Head of Department (Enforcement)

Securities and Exchange Commission of Pakistan

..... Respondent

Date of hearing

17/05/13

ORDER

Present:

For the Appellant:

Mr. Hammad Raza Zaidi

Mr. Nasir Altaf

Department representative:

Ms. Amina Aziz, Director (Enforcement)

Mr. Rohail Ahmed Abbasi, Assistant Director (Enforcement)



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1. This order is in appeal No. 13 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "Act") against the order dated 31/01/13 (the "Impugned Order") passed by the Respondent.
2. The brief facts of the case are that inspection of the books of account and papers of the Climax Engineering Company Limited ("Company") was conducted under the authority of the order of this Commission dated 05/06/12 under provisions of section 231 of the Companies Ordinance, 1984 ("Ordinance") to verify the sale transaction of Company land measuring 354 kanals and to verify the loan from directors and sponsors.
3. Based on the findings of the inspection, the following was observed:
 - i. The Company submitted during inspection that factory land inside the boundary wall is 40 kanals which it was selling to Qasim & Company whereas from valuation reports and mutation document it was confirmed that factory land inside the boundary wall was more than 60 kanals.
 - ii. The Company was selling 40 kanals of land facing G.T. Road for Rs. 6,500,000 per kanal to Qasim & Company which was very low as compared to market surveyed by the officers of the Commission.
 - iii. The Company sold land of 8.90 kanal for Rs. 4,113,789 per kanal in 2012 to Mr. Ashfaq Rabbani, which was less than market value. As per Indus Surveyors (Pvt.) Limited valuation Report dated 21/07/09, the market value of this land was Rs. 6,000,000 per kanal in 2009. The company also



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failed to provide details regarding sale of 5.20 kanals of land to Mr. Ashfaq Rabbani which was showed by the Company as pledged.

iv. The Company sold 64.75 kanals to land to Faisal and Company for Rs. 1,536,679 per kanal in 2007 which was less than market price. As per F.K.S valuation report dated 16/07/06, the market value of land facing G.T. road was valued at the rate of Rs. 12,000,000 per kanal and other than facing on G.T Road was valued at Rs. 3,200,000 per kanal in 2006.

v. In 2005, the Company sold 48 kanals of land to Muhammad Faisal Afzal son of Muhammad Afzal who was also member of Faisal and Company, at the rate of Rs. 400,000 per kanal as per annual audited accounts of the Company for the financial year 2005, which was even less than market value of the land in 1998. As per valuation certificate of this land by M. Iqbal & Associates dated 09/02/98, the market value of this land was as follows;

Khasra nos. 1428, 1433 @ Rs. 700,000 per kanal

Khasra nos. 1429, 1432 @ Rs. 600,000 per kanal

Khasra nos. 1430, 1431 @ Rs. 550,000 per kanal

As per Iqbal A. Nanjee & Co. valuation report dated 27/06/03, the average price of this land was Rs. 1,000,000 per kanal in 2003.

vi. In 2004, the Company sold 48 kanals of land to Mr. Abdul Ghafoor for Rs. 400,000 per kanal, which was far below the market value of land in 2004, because as per valuation certificate of this land by M.Iqbal & Associates dated 09/02/98, the market value of land in Khasra nos. 1430,



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1431, 1442, 1445 was rated at Rs. 550,000 per kanal in 1998. Moreover, as per Iqbal A. Nanjee & Co. valuation report dated 27/06/03, the average price of this land was Rs. 1,000,000/ kanal in 2003.

vii. The Company also failed to provide following documents/information during inspection.

- a. Certified true copies of cheques and related bank statements of the Company and directors to verify loan from directors of Rs. 42,691,000 (2010: Rs.37,891,000).
- b. Certified true copies of cheques and related bank statements of the Company and spouses & close family members of directors to verify loan from close family members of directors of Rs. 61,199,000 (2010; Rs. 57,941,000).
- c. Complete information regarding sale and distribution of land before financial year 2003.
- d. Certified true copies of cheques/payments received and its reflection in the bank statements of the Company and complete sale documents related to;
 - Sale of 48 kanals of land to Mr. Abdul Ghafoor in 2004
 - Sale of 48 kanals of land to Mr. Faisal Afzal in 2005
 - Sale of 8.95 kanals of land to Mr. Ashfaq Rabbani in 2012
 - Sale of 40 kanals of land to Qasim & Company in 2012



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4. The transactions with respect to sale of land prima facie cast serious doubts on the legitimacy of the transactions/activities and had necessitated further investigation into the affairs of the Company. The Respondent, therefore, in exercise of the powers conferred under the provisions of section 263 of the Ordinance, appointed Ms. Amina Aziz, Director, Mr. Shahid Javed, Deputy Director and Mr. Rohail Ahmed Abbasi, Assistant Director as inspectors ("Inspectors") to conduct investigation on all aspects of the Company and after scrutiny of the entire record and books of accounts, furnish their report along with supporting documents to the Commission within 30 days from the date of the order.
5. The Appellant has preferred to file the appeal against the Impugned Order. The Appellant's representative at the hearing argued that the inspection ordered in the Impugned Order is likely to affect the reputation of the Appellant and there is no reason for investigation as the responses and documents have already been provided in response to the queries raised by the Respondent. All the requisite documents had been provided at the time of inspection as requested by the officers of the Commission and proof of receipt of documents would be provided to the Appellate Bench. Furthermore, documents would be provided in support of the argument that the inspection officers do not have the authority according to the law to conduct a value survey and only those on the approved list of valuers have the authority. The Appellant subsequently submitted the following documents vide their letter dated 21/05/13:
- (i) Guidelines for Enlistment of Valuers by PBA (SBP) mentioning the Regulatory Framework for Professional valuers, Structure of Approved list



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and Ownership Requirement for Enlistment, Code of Conduct for Approved valuers, Mechanism for Enlistment, Code of Conduct for Approved Valuers, Mechanism for Enlistment and management of Enlisting.

- (ii) List of Approved Valuers mentioning FKS Building Services, Indus Surveyors and Iqbal & Nanjee & Co. as Approved ones.
- (iii) Receiving of documents by the Officers of the Commission dated 05/12/12.
- (iv) Receiving of documents by the Officers of the Commission dated 21/12/12
- (v) Map of the land desired by the Appellate Bench.

6. The department's representative argued that during inspection the Company failed to provide the requisite documents and the transactions with respect to sale of land which had necessitated further investigation into the affairs of the Company. The documents enclosed with the letter dated 21/12/12 were incomplete and did not satisfy the requirements of paragraph 7 of the Impugned Order. The Impugned Order is merely an interim order which does not dispose of the entire matter. Section 33(1) (a) of the Act specifically provides that no appeal shall lie against an interim order which does not dispose of the entire matter. Reliance was placed on the judgment cited at *PLD 2010 Supreme Court 946* titled *Attock Refinery Ltd vs. Executive Director (Enforcement) and Monitoring Division, SECP and another*



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7. We have heard the parties. Section 33(1) of the Act and section 263 of the Ordinance is reproduced for ease of reference:

33. Appeal to the Appellate Bench of the Commission.- (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2)

Provided that no appeal shall lie against ----

(a) an administrative direction given by a Commissioner or an officer of the Commission;

(b) an order passed in exercise of the powers of revision or review;

(c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and

(d) an interim order which does not dispose of the entire matter.

263. Investigation of affairs of company on application by members or report by registrar. - The Commission may appoint one or more competent persons as inspectors to investigate the affairs of any company and to report thereon in such manner as the Commission may direct.—

(a) in the case of a company having a share capital, on the application of members holding not less than one-tenth of the total voting powers therein;

(b) in the case of a company not having a share capital, on the application of not less than one-tenth in number of the persons entered on the company's register of members;



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(c) *in the case of any company, on receipt of a report under sub-section (5) of section 231 or on a report by the registrar under sub-section (6) of section 261.*"

Emphasis Added

The Appellant vide letter dated 21/05/13 submitted documents, which were forwarded to the department for comments. The department submitted comments dated 30/05/13 to the letter dated 21/05/13 which revealed that the Company failed to provide: a) any document regarding accounting policy for advances from employees against sale of land; b) the final voucher for sales of land to Mr. Faisal Afzal was not enclosed with the letter; c) the Company provided general ledger report of the Company regarding loan from directors of Rs. 43 million but failed to provide complete supporting documents regarding payments received and made to directors during the last 10 years; d) details and supporting documents regarding loan from spouses and close family members of the directors of Rs. 61 million and copies of cheques and supporting details of only 9.7 million were provided out of the total loan from directors and family members of Rs. 104 million; e) tender notice and quotations were not enclosed with the letter; f) supporting documents for sale of land were incomplete. We are not persuaded by the contention of the Appellant's representatives that all documents were provided to the inspection team, therefore the Impugned Order was rightly passed.

Be that as it may, the Impugned Order is an interim order to investigate the affairs of the Company pursuant to section 263 of the Ordinance with no penal repercussions for the Appellant. Section 33 (1) (d) of the Act provides that no appeal shall lie against, "...an interim order which does not dispose of the entire matter." We have perused the judgment of the honorable Supreme Court cited at *PLD 2010 Supreme Court 946* titled *Attock Refinery Ltd vs. Executive Director, (Enforcement) and Monitoring Division, SECP and another*, wherein, it was held



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that, "... the mere appointment of an investigator does not "dispose of the entire case" and, "... the appellate jurisdiction of the Courts under the said 'provision is not to be invoked (in the context of the present case) until the investigators have done their job of investigating the affairs of the company."

In view of the above, the appeal against the order of investigation being an interim order under section 33(1) (a) of the Act does not lie before the Appellate Bench. The appeal is dismissed with no order as to cost

(Mohammad Asif Arif)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SSD, OED, SED & LLGCD)

Announced on: 18/06/13