



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
SPECIALISED COMPANIES DIVISION

Before Sadia Khan, Executive Director

IN THE MATTER OF

M/S. BILWANI & CO., AUDITORS OF INTERNATIONAL INVESTMENT &
FINANCIAL SERVICES LIMITED

Date of hearing:

April 03, 2002

Present:

Mr. Abu Baker Bilwani for and on behalf of
Bilwani & Co., Mr. Wajid Waheed Khan,
Joint Director (Mutual Fund)

ORDER

1. Through this order I intend to decide issues arising from a show cause notice dated 04.07.2001 served by this office on M/s. Bilwani & Co., Chartered Accountants. The brief facts giving rise to the said show cause notice leading to the passing of this order are as under:

- i. M/s. Bilwani & Co., Chartered Accountants, having their head office at 12, Idrees Chambers, Talpur Road, Opp. National Bank of Pakistan, Karachi, (hereinafter referred to as "Bilwani & Co.") are a firm of chartered accountants. In year 1992, M/s. International Investment and Financial Services Limited, a public company, limited by



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shares, having its registered office at Room Nos. 429-430, Karachi Stock Exchange Building, Stock Exchange Road, Karachi (hereinafter referred to as the “Company”) appointed Bilwani & Co. as its statutory auditors in compliance with section 252 (which makes it mandatory upon companies to have their auditors appointed) of the Companies Ordinance, 1984 (hereinafter referred to as the “Ordinance”).

- ii. The annual audited accounts of the Company for the year 2000 indicated a deteriorating financial position of the same, the Securities and Exchange Commission of Pakistan (the “Commission”), therefore, issued show cause notice to the Company under section 265 of the Ordinance as to why an inspector may not be appointed to investigate into the affairs of the Company. The management of the Company was given an opportunity of hearing to explain their position in light of the allegations contained in the show cause notices issued to them.

- iii. During the course of hearing dated 28.05.2001, Mr. Akram Ganchi, Chief Executive of the Company stated before me that Bilwani & Co. were indebted to the Company to the tune of Rs.0.227 Million. At the said hearing, Mr. Ganchi recorded a statement to the effect that Bilwani & Co. had opened an account with the Company and an amount of Rs. 0.227 million was outstanding as receivable from them since 2000 due to trading loss. To further substantiate his statement, Mr. Akram Ganchi also furnished with this office documentary evidence in the form of Customer Ledger Report, showing various transactions during the period from 26th January, 2000 to 19th July, 2000 with an accumulated balance of Rs. 0.227 million receivable from Bilwani & Co. After having received duly signed statement of Mr. Akram Ganchi, Chief Executive of the Company, followed by the documentary evidence (Ledger Balance Report) indicating violation of the mandatory provisions of law (section 254 of the Ordinance), this office issued a show cause notice dated 04.07.2001 (hereinafter referred to as the “Notice”), to Bilwani & Co.



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and after giving two opportunities of hearing (which Bilwani & Co. failed to avail of), an *ex-parte* order dated 23.07.2001 (whereby a penalty of Rs. 25, 000/- was imposed upon Bilwani & Co.) was passed by this office. Bilwani & Co. however, filed an appeal against the said order which was heard by the Appellate Bench III of the Commission. The Appellate Bench set aside the *ex-parte* order passed by this office on the ground that sufficient opportunity of hearing was not provided to Bilwani & Co. and further directed this office to pass a fresh order on the issues contained in the Notice, after providing Bilwani & Co. another opportunity of hearing. Accordingly, an opportunity of hearing was provided to Bilwani & Co. on 03.04.2002 and hence this second order on the matter.

2. The Notice alleged that in light of the statement of Mr. Akram Ganchi, Chief Executive of the Company and in light of the Customer Ledger Report (showing various transactions during the period from 26th January, 2000 to 19th July, 2000) furnished by the same, Bilwani & Co., were *prima facie* indebted to the Company to the tune of Rs. 0.227 million. The fact that Bilwani & Co., the statutory auditors of the Company, had apparently become indebted to the Company, invoked some of the provisions contained in Section 254 of the Ordinance. The relevant portions of section 254 are reproduced below:

“254 (3)(d) None of the following persons shall be appointed as auditor of a company, namely:

(a).....

(b).....

(c)....

(d) a person who is indebted to the company;

(e)....”

Sub-sections (5) & (6) of section 254 further provide as follows:



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“(5) If, after his appointment, an auditor becomes subject to any of the disqualifications specified in this section, he shall be deemed to have vacated his office as auditor with effect from the date on which he becomes so disqualified.”

“(6) 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.”

(emphasis is ours)

3. I would now examine the submissions made by Bilwani & Co. in response to the Notice which they made known to me through their written response (letters dated 6th July, 2001, 2nd & 6th April, 2002) and which were further reiterated by Mr. Abu Baker Bilwani (the sole proprietor of Bilwani & Co.) who appeared before me on behalf of Bilwani & Co. on the date of hearing (03.04.2002).

A. Through their written response, Bilwani & Co., first of all contended that the authority to issue show cause notice under sub-section (6) of section 254 of the Ordinance did not vest in this office and instead the same was vested with Executive Director (Enforcement Division) vide S.R.O. 230 (I)/2001 dated 16.04.2001.

B. In this regard reference may be made to serial no. 4 of S.R.O. 862(I)/2000 dated 06.12.2000 which vests this office with all the powers and functions under the provisions of the Ordinance and other corporate laws as may be applicable to the specialized companies. Reference may also be made to S.R.O. 183(I)/2001 which empowers this office to exercise all adjudicatory powers under the relevant laws and to take cognizance of the offences. The two Statutory Regulatory Orders mentioned herein, when read



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together, establish beyond any doubt that this office is vested with the authority to issue show cause notice as contemplated under section 254 of the Ordinance and therefore, the act of issuing Notice to Bilwani & Co. does not suffer from any legal infirmity.

C. Bilwani & Co. further submitted that they never opened an account with the Company and were not indebted to the same in any manner/capacity whatsoever. On the contrary, Bilwani & Co. alleged that it was the Company which was liable to pay Rs. 640,000/- to Bilwani & Co. for the professional (accountancy/consultation) services that it had rendered for the Company. To support their claim, Bilwani & Co. also produced before me copies of bills indicating the fees charged from the Company for the accountancy/consultation services provided by them to the Company. Furthermore, Bilwani & Co. furnished an affidavit of Mr. Akram Ganchi, Chief Executive of the Company stating that the bills of the amount of Rs. 640,000/- of Bilwani & Co. were pending against the Company.

D. Bilwani & Co. also assailed the authenticity and evidentiary value of the Ledger Balance Report. According to them the said report was fictitious and therefore had no evidentiary value. It was further submitted that though Mr. Akram Ganchi, Chief Executive of the Company had alleged that Bilwani & Co. were account-holders of the Company, however, no account-opening forms were produced by him. Account-opening Forms, according to Bilwani & Co. was a mandatory requirement for opening an account with any brokerage house, institution or a bank and the said form has to be duly signed by the person wishing to open an account. Mr. Abu Baker Bilwani submitted that no account opening form was ever signed by him. He submitted that signed transfer deeds, share certificates, proof of dispatch, receipt, lodgment and delivery of shares were also not supplied to him by the Company which clearly proves that all was being done to stop him from demanding his outstanding bills of Rs. 640,000/-. According to him, no account



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opening form was ever signed by him and despite his requests for supply of the account opening form, copy of the same has not been supplied to him. According to Bilwani & Co., the statement of Mr. Akram Ganchi, Chief Executive with respect to Bilwani & Co. being account-holders of the Company should also not be relied upon, as an affidavit had been signed by the same stating that the Company owed a sum of Rs. 640,000/- to Bilwani & Co.

E. Mr. Abu Baker Bilwani submitted that he has been practicing as a chartered accountant since 1982 and has throughout his practice enjoyed a clean record and reputation. According to him he worked as a statutory auditor of the Company for a meager sum of Rs. 25,000/- only and he had always kept the benefit of the Company and its shareholders above all else. In support of this he furnished orders (passed in the proceedings in which Mr. Abu Baker Bilwani was representing the Company) of the Tax authorities granting relief to the Company. According to him it was through his selfless efforts that he brought about tremendous amount of financial benefit to the Company and its shareholders.

4. A. I have deliberated over the above mentioned submissions made by Bilwani & Co. and have also perused through the documents placed before me. Mr. Akram Ganchi (now ex-Chief Executive of the Company, as a new management has taken over the affairs of the Company) twice (first time during a hearing on 28.05.2001 and second time during a hearing held on 21.03.2002) recorded statements to the effect that Bilwani & Co. were indebted to the Company to the tune of Rs. 0.227 million. The second statement of Mr. Akram Ganchi was made in the presence of five ex-Directors of the Company in which he also denied having signed any affidavit in the capacity of Chief Executive of the Company stating that the Company was supposed to pay/adjust outstanding bills of Bilwani & Co. He also recorded in his statement that he still held the same position as he



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recorded in his earlier statement on 28th May, 2001 wherein he confirmed that Mr. Bilwani has opened an account with the Company and an amount of Rs. 0.227 million is outstanding as receivable due to trading loss against Bilwani & Co. in account No.01209 maintained with the Company. According to the second statement made by Mr. Akram Ganchi, Mr. Abubaker Bilwani approached him (while the former was still a Chief Executive of the Company) with the request that he (Mr. Ganchi) acknowledge some fictitious bills in earlier dates so that the debit balance of Bilwani & Co. could be converted into credit balance by counter claim, which request, however, Mr. Ganchi refused to accept. During the hearing before me on 09.04.2002 Mr. Abu Baker Bilwani was apprised of the second statement made by Mr. Ganchi.

B. In my view, the two statements made by Mr. Ganchi in two separate hearings and the statement contained in the affidavit of Mr. Akram Ganchi (placed before me by Mr. Bilwani) being contradictory, have only served to confuse the issues more and cannot be considered for the purpose of deciding the issue at hand. It may however be noted that as one of the statements has to be untrue, initiating criminal proceedings (in the event the said affidavit was falsely executed) against the deponent for executing false affidavit is an option that this office might, if it deems fit, like to exercise.

C. I feel that the method which the Company adopted for opening the accounts is very relevant for ascertaining as to whether a particular account was fictitious or genuine. It appears that before the Company opened an account in favour of a person, it required him to sign certain documents. Accordingly, apart from the documentary evidence in the form of the Customer Ledger Report, the Company, in this regard, was advised to furnish documents containing request for opening account and bearing signatures of Mr. Bilwani. The Company however, failed to produce the said documents. According to the Company, the records that the new management inherited from the previous management



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contained only seven or eight account opening forms in respect of clients dealing with the Company while the rest of the account-opening forms were missing. However, the new management confirmed that according to the books of account of the Company (as at 22.04.2002), trading account number 01209 of Bilwani & Co., ex-auditors of the Company, showed a debit balance of Rs. 0.227 million.

D. With regard to transactions executed during the period from 26th January, 2000 to 16th July, 2000 and a debit balance of Rs. 0.227 million appearing in the customer ledger report, Bilwani & Co., being the auditors of the Company for the year 2000, should have been aware of the fact that their name was appearing in the books of the Company as debtors and it is not clear as to why Bilwani & Co. failed to react to their name being falsely shown in the ledger report. The Inspector appointed by the Commission to investigate into the affairs of the Company also confirmed that the said account indicating a debit balance of Rs. 0.227 million existed in the books of accounts of the Company. Report of the Inspector, M/s. Taseer Hadi Khalid & Co. in this regard, reports as follows:

“As of December 2000, the external auditors (which are Bilwani & Co.) was also indebted to the Company for Rs. 0.227 million representing trading losses incurred for which payments were made to clearing house. This is prohibited by section 254(3)(d) of the Companies Ordinance, 1984.”

E. Though Bilwani & Co. maintain that as the Company failed to produce any document establishing that Bilwani & Co. had opened an account with the Company and were indebted to the same, the new management asserts that a trading account in the name of Bilwani & Co. showing a debit balance of Rs. 0.227 million exists in the books of accounts of the Company. In this regard, letters written by the management demanding



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repayment from Bilwani & Co. were also placed on record before me. This, in my view is a peculiar situation faced by Bilwani & Co. Mr. Bilwani submitted during the hearing before me that he went out of the way in extending favours to the ex-management of the Company as he believed that the said management was placed in a difficult situation because of the undue influence exercised by one Mr. Nusrat Ali who was the main sponsor/majority shareholder of the Company. The same management however, seems to have conspired against Mr. Bilwani and in utter disregard of all the favours extended by him, went ahead and opened a fictitious trading account in the name of Bilwani & Co. Upon enquiry as to what motive the ex-management had in mind in opening a fictitious account in the name of Bilwani & Co., Mr. Bilwani submitted that as the Company owed Rs. 640,000/- to Bilwani & Co. on account of consultancy services which they had been rendering for the Company for more than six years, the management in order to stop him from demanding the said amount, opened the said fictitious account. It may however be noted that the amount of Rs. 640,000/-, which Mr. Bilwani claimed the Company owed to him, did not find any mention in the accounts of the Company audited by him. When enquired as to why the said amount did not appear in the annual audited accounts for the year 2000 which Bilwani & Co. had audited, Mr. Bilwani had no answer. On one hand Mr. Bilwani claims that he was not indebted to the Company as it owed him Rs. 640,000/- while on the other hand Company's liability towards Bilwani & Co. was not disclosed/reflected in the annual audited accounts of the Company audited by no other than Bilwani & Co. This indicates that the annual accounts of the Company as audited by Bilwani & Co. did not give true and fair view of the state of affairs of the Company. Furthermore, the fact that Bilwani & Co. continued to provide services to the Company for more than five years without being paid by the same raises questions for which no easy answers are available. Mr. Bilwani's claim that the Company owed him a sum of Rs. 640,000/- for his services is also in contradiction to his statement that he worked for the



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Company on a remuneration which was far less than the prevalent market rates for the services similar to those he provided to the Company.

F. It also appears that Mr. Bilwani enjoyed a very favourable position with the management as he was representing the Company before various authorities and was appearing on behalf of the Company before the Tax authorities and also before the Commission on various occasions. Also, the management wished to attain approval of the share holders for appointment of Bilwani & Co. as statutory auditors for the year 2001 as well.

G. The management had authorized Mr. Bilwani to represent the Company on various forums and he being of the view that the management was in difficulty sought to help the same. Though Mr. Bilwani denies having opened any account with the Company and a copy of the account-opening form or agreement for opening an account is not available on record, motive of the management as explained by Mr. Bilwani in opening a fictitious account in the name of Bilwani & Co. has also proven to be without any substance. His assertion that the management opened the said account in order to stop him from demanding payment of Rs. 640,000/- from the Company is contradicted by the fact that the annual accounts of the Company audited by Bilwani & Co. did not find mention of Company's liability towards Bilwani & Co. Assuming that the Company owed a sum of Rs. 640,000/- to Bilwani & Co. leads me to the unavoidable conclusion that Bilwani & Co., the statutory auditors of the Company, failed to report to the shareholders that no mention of the said liability was made in the annual accounts of the Company. Also, the fact that Bilwani & Co. continued to render services for the Company when no payments (for over a period of five years) were forthcoming from the Company, indicates a relationship which was not of an ordinary professional nature. Under normal circumstances a professional organization would stop providing its



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services to those who were not paying for its services while in the case at hand Bilwani & Co. continued to provide services to the Company without receiving any consideration from the Company.

H. In my view, the provisions contained in section 254 of the Ordinance aim to ensure independence of the auditors as the need for independent audits cannot be over-emphasised. The auditors of a company are appointed and remunerated by the shareholders and the existence of auditors is justified only because of the fact that they give an independent opinion as to the affairs of the company which is primarily for the benefit of shareholders. In my view if an auditor is to maintain independence, he should have no financial interest whatsoever, direct or indirect, with the company or its management, during the period of his audit work. Also, an auditor can be considered independent only if he avoids any relationship which might arouse the suspicion that such relationship had prevented an impartial attitude of mind. Being the statutory auditors of the Company, Bilwani & Co. were required to ensure that no relationship of obligation appeared to exist between the two which would have been possible only if Bilwani & Co. had transacted with the Company in a usual and ordinary manner. However, the manner in which Bilwani & Co. transacted with the Company while performing their duties as auditors is far from being ordinary. The act of providing services to the Company without receiving any remuneration for the same and making no mention of Company's liability towards Bilwani & Co. in the annual audited accounts throws serious doubts on Mr. Bilwani's role as an independent auditor. The manner in which Mr. Bilwani performed his duties as statutory auditor of the Company therefore, appears to be in utter disregard of the spirit of section 254 of the Ordinance as an auditor, during the performance of his duties, must show integrity and independence of judgment which is not possible in the presence of entangling affiliations or interests. In my view, an auditor, in the performance of his duties, should not only be free from impropriety but also from the appearance of it.



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Contradictions in the statements made by Mr. Bilwani indicate a conduct which is unbecoming of a statutory auditor who owes allegiance towards the share holders. I am of the considered view that Bilwani & Co., in performing their duties as statutory auditors of the Company, failed to show an honest disinterestedness and impartiality and thus permitted doubt to be cast upon their reliability and fairness as auditors. I hereby warn them to exercise due care in their future assignments as auditors of companies. Bilwani & Co. are also hereby reminded that the two basic qualifications of auditors, needed for the purpose of the company law, are (a) the auditors should be professionally competent, and (b) in the performance of their duties, they should show integrity and independence of judgment.

5. Issued under my hand and seal on this 30th of May 2002.

Sadia Khan
(Executive Director)