Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

J. C. M. No. 38 of 2024

Date	Order with signature of Judge

1. For hearing of CMA No.2552/2024.
2. For hearing of CMA No.2553/2024.
3. For orders on CMA No.76/2025.
4. For hearing of main petition.

18.11.2025

Mr. Yahya Iqbal, Advocate for the Petitioners.
M/s. Danish Nayyar and Ms. Javeria Ali, Advocates for the Respondent No.2.
Syed Hafiz Ebad, Advocate for SECP.

x-x-x-x-x-x

MUHAMMAD OSMAN ALI HADI J.- Learned Counsel for the Petitioners avers that there has been oppression and mismanagement of the Petitioner No. 1/Company, due to which the instant petition has been filed under section 286 of the Companies Act 2017.

2. Learned Counsel for the Petitioners submits that the Petitioners are collectively 82.5% shareholders in Petitioner No.1/Company, whereas Respondent No. 2 is a 17.5% shareholder and a former Chief Executive Officer. Counsel for the Petitioners has submitted that Respondent No. 2 has withheld passwords for the Company's online portal, which are required by the Company for fulfilling certain mandatory filings with the Respondent No. 1 / Security Exchange Commission of Pakistan (**"SECP"**).

3. Learned Counsel for the Petitioners next contended that without the said passwords, such filings were not possible, rendering the Company in breach of statutory requirements through no fault of its own. He has also placed reliance upon Para 12 of the Counter Affidavit filed by Respondent No. 2, which Counsel claims is an admission that the SECP passwords are in possession of Respondent No. 2.

4. Learned Counsel for Respondent No. 2 controverts the assertions placed forward by the Petitioners, and states that the instant petition is not maintainable, as it does not relate to the affairs of the Company. He submits that this may be considered as a private dispute between the parties, to the exclusion of the management of the Company, and hence the company jurisdiction cannot be invoked. He further submits that should the Petitioners have any such grievance, they should avail their remedy under civil law and not under the company jurisdiction.

5. I have heard the learned Counsels for the Parties. The first issue on which I confronted the Counsel for the Petitioners was regarding his prayer clauses, which do not appear grantable under the company jurisdiction in the given circumstances. For purposes of clarity, the prayer clause in the instant Petition reads:

i. *Declare that the Petitioners, as majority shareholders, are entitled to manage the affairs of Petitioner No.1 without unlawful interference by Respondent No.2.*

ii. *Declare that Respondent NO.2 is no longer the CEO of the company, as decided in the AGM.*

iii. *Direct Respondent No.1 & 2 to provide Petitioners with immediate access to the company's portal and other statutory compliance platforms.*

iv. *Direct Respondent NO.2 to hand over all passwords, documents, and access rights related to the company's operations.*

v. *Permanently restrain the Respondent No.2 from interfering in the company's affairs, including its production and broadcast of Shark Tank Pakistan.*

vi. *Permanently restrain Respondent No.2 from making defamatory statements against the Petitioners and stakeholders.*

vii. *Any other relief this Hon'ble Court may deem fit.*

viii. *Grant cost of the proceedings.*

6. As the prayer clauses appear to seek certain declarations and injunctions which would fall wide of the company jurisdiction, upon confrontation, the Counsel for the Petitioners immediately dropped prayer clause nos. 'V' & 'VI' *ibid.*

7. When further confronted, the Petitioners admitted Respondent No. 2 was no longer the Chief Executive Officer (**"CEO"**) of the Petitioner No. 1, and as such ceded that prayer clause no. 'II' *ibid.* was also not tenable (as it sought a declaration against Respondent No. 2 being the Chief Executive Officer, which he admittedly was not).

8. When I inquired from the learned Counsel for the Petitioners as to which specific provisions of the Companies Act, 2017 (**"2017 Act"**) were violated? he remained unable to provide any such specific violations, but simply referred to section 286 of the 2017 Act in generic manner, without showing any precise violations of law.

9. Furthermore, as the Petitioners are admittedly the vast majority shareholders i.e. holding 82.5% in the Company, and have admitted that Respondent No. 2 is not involved in the management of the Company, it beggars belief that such a vast majority-shareholders like the Petitioners, who (admittedly) hold management control, could be oppressed by a single minority shareholder i.e. Respondent No. 2 (having no management role).

10. This appears at best to be a dispute *inter se* between the parties, for which the company jurisdiction cannot be used as a prop to instigate settlement of personal grievances. The essence of oppression under the company jurisdiction has been well elaborated by the Lahore High Court in the case of *Nadeem Kiyani v American Lycetuff*,[1] which dealt with this issue in a petition filed under 286 of the 2017 Act, whereby it was opined:

[1] 2021 CLD 7; followed in the *Tehzeb Bakers* case @ 2024 CLD 113

12. *Furthermore, it has been held in the case of "Muhammad Ujaz Tahir v. Federation of Pakistan and others" (2014 CLD 1683) that "Court under sections 290 and 291 of the Companies Ordinance, 1984 could not look into a dispute inter se as the parties. Allegations made by the Petitioner did not amount to oppression and mismanagement under section 290 of the Companies Ordinance, 1984. Petition under section 290 was held to be not maintainable". Likewise in "Muhammad Fikree and 3 others v. Fikree Development Corporation Ltd. and 8 others" (1992 MLD 668) it was held that "section 290 of the Companies Ordinance, 1984 cannot be invoked by any party for settlement of disputes between the parties inter se, but the only object behind section 290 appears to be that the affairs of the Company must be conducted in a lawful manner and strictly in accordance with the Memorandum and Articles of Association of the Company."*

13. Moreover, similar view was taken in "Najamuddin Zia and others v. Mst. Asma Qamar and others" (2013 CLD 1263) by holding that:

" . Provisions of section 290 of the Ordinance could not be invoked for settlement of disputes between the parties inter-se as said provision essentially intended to control and prevent oppression of rights of minority shareholders and mismanagement by majority shareholders .".

It was further held that:

"In order to invoke the jurisdiction of Company Judge of High Court under section 290, Companies Ordinance, 1984 it must be made out that the company's affairs are being conducted in a manner prejudicial to the public interest or oppressive to any member or members of the company, which may justify the winding up order. The provisions are essentially intended to control and prevent oppression of the rights of the minority shareholders and mismanagement by majority shareholders. The word "oppression" must be given its ordinary sense. "Oppression" complained of should involve visible departure from the standard of fair dealing and the violation of conditions of fair play on which every shareholder, who entrusts his money to a company, is entitled to rely. The term "oppression" has not been defined in the Companies Ordinance, 1984, and it is left to the court to decide on the facts of each case whether there is a case of "oppression" or not, which calls for action under section 290, Companies Ordinance, 1984."

14. The above discussion clearly shows that if we look at the true intent and spirit of section 286 of the Act, it is an alternative to the winding up of a company and has been incorporated in the law to safeguard the minority shareholders from oppression and mismanagement of majority shareholders and to ensure that the affairs of the Company must be conducted in a lawful manner and strictly in accordance with the Memorandum and the Articles. To make an order under Section 286 of the Act, Court has to be satisfied that the Company's affairs are being conducted in a manner warranting exercise of such jurisdiction and winding

up order would unfairly prejudice the members or the creditors. The Court has to be satisfied from the facts that the affairs of the company are being conducted, or are likely to be conducted, in (a) an unlawful manner, or (b) fraudulent manner, or (c) a manner not provided for in its memorandum, or (d) a manner oppressive to any of the member(s) or creditor(s), or (e) a manner that is unfairly prejudicial to the public interest. Mere allegation of certain irregularities committed by the Company do not provide sufficient grounds or give rise to the justification of exercising powers under this Section because those are in domain of the Commission to exercise its powers vested under the law in this regard. While dealing with an application under this Section, the Court cannot look into dispute inter se the parties and this Section cannot be invoked for settlement of disputes in respect of intellectual property rights between the parties in which other forums are available under the relevant laws."

11. The Petitioners No. 2, 3 & 4, being the vast majority shareholders and in control of Petitioner No. 1 / Company, have failed in showing any form of oppression or mismanagement of the affairs of the Company. The prayer clauses sought in the Petition also suffer infirmities. This *inter se* dispute orchestrated by the Petitioners cannot be decided herein (for reasons stated *ibid.* and as elaborated in the *American Lycetuff* judgement *supra*, the reasoning of which I remain in agreement with).

12. Advancing further, it is settled law that first jurisdiction must be ascertained, before a court may proceed to deliberate a matter further. The company jurisdiction of this Court is provided by the legal cover of the Companies Act 2017, under section 5. The said section 5 of the 2017 Act specifically holds for invocation of the company jurisdiction when there is an infringement under the Act itself which the Company Court is empowered to entertain, i.e. when a provision of the 2017 Act has been violated. The Petitioners have also failed in this aspect in showing any such infringement or violation to the Company under the 2017 Act.

13. The main grievance of the Petitioners[2] appears to be that the password for the Company portal at SECP has been withheld by Respondent No. 2, who is not handing over the same, due to which they remain unable to file certain documents.

14. Learned Counsel for the Respondent No. 2 denies the claims and submits that he does not have any of these passwords, and therefore cannot hand over the same.

15. Learned Counsel for Respondent No.1/SECP has made a statement at the bar that if the Petitioners were to approach, they (i.e. SECP) would be able to satisfy such claim of the Petitioners by assisting them to file their documents (manually), as well as issue them new passwords etc. as may be required, (obviously) subject to the Petitioners' fulfilment of legal requisites. SECP then referred to a letter dated 23.12.2024[3] in which they asked the Petitioners to approach them for manual filing of the documents, which the Petitioners to-date have not done, despite nearly one year having elapsed. This tardiness on behalf of the Petitioner creates further doubt on the genuine motives of the Petitioners in pursuing this instant course of action against the Respondents.

16. Since no affairs of the Company appear to be conducted unlawfully or fraudulently, which is *sine qua non* for invoking section 286 of the 2017 Act; as well as particularly keeping in view that no violation of the 2017 Act has been established by the Petitioners, this Petition does not fulfil requirements to bring it within the ambit of the company jurisdiction, and the same is hereby dismissed along with listed application(s).

Petition dismissed

JUDGE

Shahbaz

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[2] As per their submissions at the time of hearing
[3] Attached as 'Annexure – C' with their Para Wise Comments on File