

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar and Agha Faisal, JJ.**

CP D 408 of 2011 : Saleem Shehzada vs.
Province of Sindh & Others

CP D 2762 of 2011 : Ahmed J. Ansari & Others vs.
Province of Sindh & Others

For the Petitioners : Mr. Raja Qasit Nawaz, Advocate
(In CP D 408 of 2011)

Ms. Pooja Kalpana, Advocate
(In CP D 2762 of 2011)

For the Respondents : Mr. Ishrat Zahid Alvi, Advocate
Assistant Attorney General

Mr. Jawad Dero, Advocate
Additional Advocate General

Syed Mehmood Abbas, Advocate
Pakistan Telecommunication
Authority

Date of Hearing : 10.04.2019

Date of Announcement : 23.04.2019

JUDGMENT

Agha Faisal, J: Present petitions have been filed assailing notices dated 30.04.2009, 10.01.2011, 24.01.2011, 18.02.2011 and 02.06.2011 for recovery of Pakistan Telecommunication Authority (“**PTA**”) dues as arrears of land revenue and arrest warrants dated 08.07.2011 issued in pursuance thereof (aforementioned notices / warrants to be collectively referred as “**Impugned Notices**”). The petitioners are ex directors of a company, in respect whereof dues were determined by the PTA vide its Order dated 03.04.2008 (“**PTA Order**”) and the present petitions were filed challenging the initiation of coercive proceedings to recover such dues from the ex-directors of the said company. Since controversy in these two petitions is common, therefore, the said petitions shall be determined vide this common judgment.

2. Raja Qasit Nawaz, Advocate appeared on behalf of the petitioner in CP D 408 of 2011 and submitted that the petitioner remained director of Callmate Telips Telecom Limited ("**Company**") with effect from 29.08.2007 to 06.12.2008. It was submitted that petitioner was appointed as director in order to head the audit committee and to conduct the audit of the Company and notwithstanding the fact that the purported dues pertain to the period from 2005 to 2007, when the petitioner had no nexus with the Company, coercive measures have been initiated against the petitioner for recovery of amount. Learned counsel submitted that a company is a distinct local entity, independent of its directors, and there could be no apportionment of a company's liability upon another person solely on the ground that at some point of time the said person was director of the company. Learned counsel further argued that the Company was under liquidation and a provisional manager was appointed on 04.08.2008. It was contended that no legal proceedings could be initiated against the Company in any event without permission of the Court and admittedly none had ever been obtained. Learned counsel stressed that it was the petitioner who highlighted the irregularities in the Company, in his capacity as an audit head, and it was unfortunate that the very same liabilities were being sought to be recovered from the petitioner.

3. Ms. Pooja Kalpana, Advocate, represented the petitioners in CP D 2762 of 2011 and supplemented the arguments earlier advanced. Per learned counsel, the petitioners were also ex directors of the Company and could not be held culpable merely on such account. Learned counsel drew the Court's attention to the PTA Order and submitted it was patently apparent therefrom that the same apportioned liability solely upon the Company. Learned counsel argued that not only was there no adjudication of any amount due from petitioners but further that the very order whereby the purported dues were determined was not rendered against the petitioners. Learned counsel also articulated the argument that the entire proceedings were discrepant on account of a provisional manager having been appointed with respect to the Company and submitted that it was clear from the record that while provisional manager was appointed on 04.08.2008, the Impugned Notices were issued in 2011. Learned counsel also adverted to the purported table of liabilities contained in the comments of respondent No.4 and submitted that a bare perusal thereof

demonstrated that the dues were all in respect of the Company and that no justification or rationale has ever been advanced to recover the same from the petitioners. In respect of the aforesaid dues it was also argued that the universal service fee contribution had already been adjudged by the honorable Lahore High Court to be irrecoverable. It was thus argued that the Impugned Notices were, prima facie, unjustifiable, mala fide and without jurisdiction, hence the petitioners were entitled to maintain the present petition and further that the sufficient grounds had been made out for the Impugned Notices to be set aside.

4. Syed Mehmood Abbas, Advocate represented the PTA, respondent No.4 in present petitions, and confined his arguments to the single point that this Court does not have jurisdiction to entertain the present petitions. Learned counsel adverted to Section 9 C.P.C. and submitted that the jurisdiction of this Court was barred thereunder. Learned counsel also referred to Section 161 and 172 of the West Pakistan Land Revenue Act, 1967 and submitted that in the presence of an alternative remedy of appeal provided thereunder the present petitions were misconceived. Learned counsel also adverted to the Pakistan Telecommunication (Re-Organization) Act, 1996 and submitted that a provision of appeal was also provided thereunder. We specifically queried the learned counsel as to what was the stance of the respondents with regard to grounds invoked by the learned counsel for the petitioner, inter alia, whether liability of a company can be automatically recovered from its ex directors; whether proceedings can be initiated without the leave of Court once the provisional manager has been appointed; and also sought his arguments upon the challenged constituent of the table of liabilities. The learned counsel categorically submitted that the said arguments need not be addressed since this Court has no jurisdiction to entertain the petitions in the first instance, hence, this Court may be pleased to disregard the other arguments and dismiss the present petitions upon the issue of jurisdiction alone.

5. We have heard the respective learned counsel and have considered the record arrayed before us. The primary question before us is whether present petitions are maintainable. The honourable Supreme Court has observed in the case of *Abdul Majeed Khan & Others vs. Maheen Begum*

and Others reported as *2014 SCMR 1524* that where orders passed by the lower court or authority are without jurisdiction, such orders were deemed to have been passed illegally and High Court would be justified in exercising its Constitutional jurisdiction to rectify the same. In the presence of aforesaid authority, we consider the present petitions to be maintainable and proceed to determine whether the Impugned Notices were issued within jurisdiction and in accordance with the law or otherwise.

6. The basic controversy is that the Company was determined by PTA to be a defaulter in respect of certain dues, thus, required to pay the outstanding so determined. A bare perusal of the PTA Order, whereby the determination was made, demonstrates that no show cause notice was ever issued to any person other than the Company and further that the entire proceedings were solely based upon the claims against the Company. It may be pertinent to record that there is no reference to the petitioners, or the petitioners' purported liability contained in the PTA Order.

It was also brought to our attention that the Company had gone into liquidation and a provisional manager was appointed, therefore, PTA had filed its claim there before in 2009. Notwithstanding the fact that no show cause notice was ever served upon the petitioners, no proceedings were ever conducted there against and also that no mention of the petitioners is present in the PTA Order, however, the PTA has sought coercive proceedings against the petitioners under West Pakistan Land Revenue Act, 1967.

7. There is an age old principle that a company is a separate juristic person, distinct from its shareholders or the directors, enunciated by the House of Lords in *Solomon versus Solomon* reported as *1897 AC 22*. The aforesaid principle is duly recognized in our jurisprudence and an early manifestation of the same is apparent from a judgment of the honorable Supreme Court in case of *Ikram Bus Service & Others vs. Board of Revenue West Pakistan* reported as *PLD 1967 SC 564*. There is a preponderance of authority demarcating the distinction between a company and its shareholders / directors and it has been consistently held that the two distinct legal entities are mutually exclusive. Additional reliance is placed in such regard upon *Tariq Saeed Saigol vs. District*

Excise & Taxation Officer Rawalpindi reported as 1982 CLC 2387, *Shamim-ud-Din vs. Federation of Pakistan & Others* reported as 1995 CLC 299, *Tanvir Rasool Roller Flour Mills (Private) Limited vs. MAPCO & Another* reported as 2002 CLD 157 and a recent pronouncement of a learned Division Bench of this High Court in *Muhammad Akbar vs. Masood Tariq Baghpati & Others* reported as 2019 CLD 1.

In *Sultan ul Arfeen & Others vs. District Officer (Revenue) City District Government of Karachi* reported as 2013 CLD 1280 a Division Bench of this High Court headed by Mushir Alam, CJ (as he then was) observed that since the liability is clearly of the company and the provisions of West Pakistan Land Revenue Act, 1967 are summary in nature, hence, the said provisions cannot be invoked against the person against whom liability has not been adjudicated or established. The facts in the said case were *pari materia* to the present controversy as proceedings under the West Pakistan Land Revenue Act, 1967 were initiated against the directors of a company, when the dues were required to be recovered from the company itself. The learned Division Bench was pleased to strike down the impugned notice in the said circumstances.

The aforesaid judgment is squarely applicable to the present facts and circumstances and nothing is apparent from the record to justify the initiation of coercive recovery proceedings against the petitioners, in respect of dues which were prima facie not established or even alleged there against, as is apparent from the PTA Order upon which the Impugned Notices are anchored. We had specifically provided an opportunity to the learned counsel for the PTA to rebut this proposition and demonstrate the basis upon which such recovery was being sought from the petitioners, however, the learned counsel failed to do so.

8. The next issue to consider is the import of Section 316 of the Companies Ordinance, 1984 (since repealed), that enunciates that when a winding up order has been made or a provisional manager has been appointed, no suit or other legal proceedings may be proceeded with or commenced against a company, except by leave of the Court and upon such terms as the Court may impose. Even though the aforesaid Ordinance has since been repealed, the corresponding provision under the

Companies Act, 2017 being Section 310, however, the earlier provision was the operative law at the time when the facts under scrutiny took place. This High Court has observed in the case of *Mackinnons Mackenzai & Company of Pakistan (Private) Limited vs. Eastern Federal Union Insurance Company Limited & Others* reported as 2002 CLD 779 that once the precepts of Section 316 of the Companies Ordinance, 1984 were attracted no steps could have been taken without permission of the Court. A Division Bench of the honorable Lahore High Court had maintained in the case of *Begum Anwar Sultana & Others vs. Mian Fazal Ahmad & Others* reported as *PLD 1986 Lahore 18* that even the recovery proceedings by a taxation officer against a company in respect whereof a provisional liquidator had been appointed required the permission of the Court. In the present case nothing is demonstrated from the record to substantiate whether the leave of Court was obtained to initiate the recovery proceedings in question. The learned counsel for the PTA was confronted with this issue and asked whether the requisite leave has been obtained prior to initiation of the legal proceedings, since a provisional manager had admittedly been appointed prior in time, and in response thereto the learned counsel replied to the said query in the negative.

9. It is apparent from the record before us and the arguments advanced that no culpability of the petitioners is apparent from the record placed before us; no show cause was ever issued to the petitioners; no proceedings for determination of any amounts were initiated there against; the PTA Order, being the entire basis for the Impugned Notices, apportions no liability upon the petitioners and in addition thereto we are constrained to observe that the learned counsel for the PTA has been unable to articulate any justification for the initiation of the coercive recovery proceedings against the petitioners, vide the Impugned Notices.

10. In view of the reasoning and rational stated herein above, it is the considered view of this Court that the Impugned Notices are wholly discrepant and without jurisdiction, hence, set aside. This is, however, without prejudice to the rights, if any, of the respondents to initiate and pursue appropriate avenues of recovery of their dues against the Company and/or any other person determined culpable in such regard.

11. These petitions, along with pending applications, are allowed in terms herein contained.

JUDGE

JUDGE

\Khuhro/PA