IN THE HIGH COURT OF SINDH AT KARACHI

JCM No. 33 of 2019

Petitioners:	**Muhammad Yousuf Ahmed & others** **Through M/s. Kazim Hassan & Shahan Karimi, Advocates.**
Respondent:	**Artistic Denim Mills Limited** **Through M/s. Arshad Tayebaly, Waqar Ahmed & Heer Memon, Advocates.**

1. ***For hearing of CMA No. 261/2019.***
2. ***For hearing of Main Petition.***

Dates of hearing:	**21.01.2020, 10.03.2020 & 18.03.2020.**
Date of order:	**16.04.2020**

O R D E R

Muhammad Junaid Ghaffar, J. This is a Petition under Section 136 of the Companies Act, 2017 ("**The Act"**) through which the Petitioners have sought the following relief(s):-

(a) Set aside the proceedings of the impugned AGM of Artistic Denim Mills Limited held on 19-10-2019 and declare the same to be illegal and invalid.

(b) After annulment of the impugned AGM, direct holding a fresh AGM and appoint an independent person to preside over fresh AGM to ensure that proceedings are conducted in accordance with the law and submit a report in this regard directly to this Court.

(c) After annulment of the impugned AGM, give strict directions to the management of the Respondent to comply with the provisions of section 134(3) of the Companies Act, 2017 read with regulation 5 of the Companies (Related Parties Transactions and Maintenance of Related Records) Regulations, 2018.

(d) After annulment of the impugned AGM, give strict directions to the management and external auditors of Respondent, to provide all the information, explanations and analyses in detailed written form along with copies of evidences and records as have been requested through the aforesaid letter dated 18-10-2019 from aforesaid two minority shareholders.

(e) Restrain the management of the Respondent from acting on any of the resolutions unlawfully passed in the impugned AGM held on 19-10-2019.

(f) Restrain the management of the Respondent from conducting any business with DL 1961 Premium Denim Inc. and Premium Distributors, Dubai.

(g) Any other and/or further relief.

(h) Costs.

2. The precise facts, as stated, are that Petitioners hold 14.45% shares in respondent Company and are aggrieved by the notice as well as the proceedings of the impugned Meeting dated 19.10.2019 and the resolutions passed thereon. It is their case that they hold more than 10% of the shareholding and are, therefore, qualified to institute present proceedings, which according to them has seriously prejudiced their interests.

3. Learned Counsel for the Petitioners has contended that the impugned notice of the meeting dated 28.09.2019, for conducting the 27th Annual General Meeting to be held on 19.10.2019, was not a proper notice as contemplated under the relevant provisions of the Act; that the statement of material facts under Section 134(3) of the Act, annexed with the impugned notice, failed to include the minimum information required under Regulation-5 of the Company (Related Parties Transactions and Maintenance of Related Records) Regulations, 2018 ("**2018 Regulations**"); that the Related Party Transactions as disclosed in Note-39 of the Annual Report could only be approved through a Special Resolution in terms of section 208 of the Act, whereas, in the impugned meeting, the same were approved through Ordinary Resolution,; that without prejudice, even if the resolution in question is a Special Resolution, the same remains illegal for the reason that Agenda Item No.6 sought approval of the transactions with related parties retrospectively; that in terms of Section 208 (ibid), investments with associated undertakings cannot be validated/ratified through subsequent ratification; that compliance of Section 134(3) of the Act is mandatory; that under Regulation-5(2) of the 2018 Regulations, the minimum information has to be provided to the members in the statement of material facts, which in the instant matter is lacking; that the statement under Section 134(3) of the Act, annexed with the impugned Notice of the meeting failed to make compliance of Regulations-5 (1) (c), (d), (f), (g), (h) & (i) of the 2018 Regulations; that even otherwise, when the meeting was being conducted the Petitioners were denied proper participation; that the majority shareholding proceeded with the impugned meeting without following proper procedure and never gave an opportunity to the Petitioners to fully participate and seek proper information; that the approval of the business in the impugned meeting was without any proper debate, discussion and even failed to record the dissenting vote of the Petitioners; that the approval of the Related Party Transactions is benefiting the Chief Executive of the Company inasmuch his wife is the interested director in respect of transaction at Serial No.3 of the Agenda Item No.6 in the Company i.e. DL1961 Premium Denim Inc. ("**DL**

1961"), whereby, the sales reimbursement and expenses have been approved to the extent of Rs.795,809,000/- and Rs.51,435,000/-, respectively; and based on these submission he has prayed to declare the proceedings of the impugned meeting as invalid and order for holding another meeting under Court supervisions, by relying upon cases reported as ***Pfizer Laboratories Ltd. and another*** **(2003 CLD 1209)**, ***M. Shahid Saigol and 16 others v. M/s. Kohinoor Mills Ltd. and 7 others*** **(PLD 1995 Lahore 264)**, ***Central Cotton Mills Limited and 2 others v. Naveed Textile Mills Limited and another*** **(1996 MLD 1943)**, ***Naveed Textile Mills Ltd. Karachi and 3 others v. Central Cotton Mills Limited, S.I.T.E Kotri, District Dadu and 2 others*** **(PLD 1997 Karachi 432)** and ***Messrs Kingsway Capital LLP and another v. Murree Brewery Co. Ltd. and 10 others*** **(2017 CLD 587)**.

4. On the other hand, learned Counsel for the Respondent Company has contended that the petition is misconceived, whereas, the Petitioners have come before the Court with unclean hands as they have failed to properly disclose the earlier proceedings initiated by them in respect of the same transactions already approved for the earlier years; that Related Party Transactions in dispute were not even required to be approved by the shareholders; but only by the Board of Directors; however, as a gesture and for the sake of transparency and compliance, it was placed before the shareholders; that under Section 208 of the Act the requirement is, that if majority of the directors are interested in such transactions, only then it has to be placed before the general meeting for approval as a Special Resolution, whereas, it does not apply to transactions entered into by the Company in its ordinary course of business on an arm's length basis; that insofar as the Petitioners are concerned, they have only impugned the transaction between respondent and DL1961; hence the interested director is only one i.e. Mrs. Maliha Faisal, and therefore, it is clearly reflected that out of seven directors only one director is the interested director in the transaction and the majority is not; therefore, it was not required to be placed in the Annual General Meeting; that notwithstanding this, the transactions are otherwise proper in the ordinary course of business and on an arm's length basis; that without prejudice these transactions were placed before the Audit Committee, which in its meeting held on 19.10.2019 approved the said transactions, and thereafter by the Board of Directors, whereas, Petitioner No.1 is a member of the Board; but has never raised any such objections; that the Petitioners have come before the Court with unclean hands and have not properly disclosed the pending proceedings initiated by them inasmuch as the respondent has already filed Suit No.620/2017, wherein, the Petitioners filed an application seeking orders against the respondent in respect of DL1961, including appointment of an Auditor for audit of transactions with DL1961, including alleged transfer pricing; JCM No. 32/2017 filed by the present

petitioners under Section 136 of the Act seeking identical prayer against the respondent in respect of the transaction with DL1961 for the year 2017, whereas, the said petition is still pending and the Petitioners have failed to proceed with the same and to obtain any restraining orders; JCM No. 29/2017 once again filed by the Petitioners under Section 286 of the Act, wherein, one of the prayers seeks a restraining order against the present respondents from carrying on any business with DL1961; that all along the Petitioners have targeted the transaction of respondent with DL1961 and their grievance is entirely of a personal nature inasmuch as in the same impugned meeting, other Related Party Transactions were also approved including transaction with Artistic Apparels (Pvt) Ltd. in which interested director is Petitioner No.1; that the conduct of the Petitioners amounts to pick and choose, as in the year 2017 identical transaction was impugned through JCM No. 32/2017, whereas, in the year 2018, they never challenged any proceedings relating to this very transaction and now once again for the year 2019 they have filed this petition; that the petition is also misconceived on the ground that all along the Petitioners had knowledge about this impugned Related Party Transaction inasmuch as Petitioner No.1 is director of respondent and has attended the meetings of the Board of Directors, wherein, these transactions were discussed and approved including that of the Audit Committee; that it is the malafide agenda of the Petitioners, whereby, they are constantly approaching the majority shareholders of the respondent Company to buy their shares at an exorbitant price and once such offer was refused, they have taken recourse to these proceedings; that Respondent Company has obtained consent and no objection from Securities and Exchange Commission of Pakistan ("**SECP**"), Auditors of the Company, the Audit Committee as well as the Board of Directors in respect of impugned Related Party Transactions; that the Petitioners have failed to make out any case and their grievance does not fulfil the requirements of Section 136 of the Act; that the meeting was conducted in a transparent manner and Petitioners were never prevented from using their rights effectively; that the majority shareholders i.e. 68,242,416 voted in favour of the resolution and 10,212,900 voted against the same; hence the meeting was conducted in a transparent manner, wherein, majority and minority has duly exercised their right for and against the resolution; that the Regulations of 2018 reflect that the information is to be provided to the directors for its approval by the Board in their meeting, and therefore, the above Regulations are not applicable in respect of the present impugned meeting; that notwithstanding this inapplicability; however, compliance was made by the Respondent Company by placing the matter in its Annual General Meeting for approval; that even otherwise Note-39 of the Annual Report also provides complete details of the transactions including sales and imbursement, whereas, the Company is making profits and is disbursing dividends, which the Petitioners are also enjoying; hence, no case is made out; that the Petitioners

do not have a prima-facie case nor balance of convenience lies in their favour and no irreparable loss would be cased to them, if the Petition is dismissed. In support he has relied upon the cases reported as ***Parshuram Dattaram Shamdasani & others v. Tata Industrial Bank, Ltd., & others*** **(1925 Bombay 49)**, ***National Investment Trust Ltd. and another v. Crescent Textile Mills Ltd.*** **(2010 CLD 1675)**, ***Parshuram Detaram Shamdasani & another v. Tata Industrial Bank, Ltd., & others*** **(A.I.R 1928 Privy Council 180)** and ***Dewan Salman Fibre Limited v. Dewan Petroleum (Pvt.) Limited*** **(2016 CLD 1049).**

5. I have heard both the learned Counsel and perused the record. This petition has been filed under Section 136 of the Act challenging the proceedings of the 27th Annual General Meeting held on 19.10.2019 and in essence, as per prayer clause, the Petitioners are aggrieved with the approval of the Related Party Transactions for the year ended on 30.6.2019, entered into by the Respondent with DL 1961 and Premium Distributors; however, at the time of arguing this Petition it is only the transaction with DL 1961 which has been pressed upon. The Petitioners own approximately 14.5% shareholding in the Respondent Company, and are thus entitled to file instant Petition under Section 136 of the Act. It would be advantageous to refer to the provisions of Section 136 which reads as under: -

> **"136. Power of the Court to declare the proceedings of a general meeting invalid.-** The Court may, on a petition, by members having not less than ten percent of the voting power in the Company, that *the proceedings of a general meeting be declared invalid by reason of a material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members from using effectively their rights*, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting:
>
> Provided that the petition shall be made within thirty days of the impugned meeting."

6. Perusal of the aforesaid provision reflects that the Court may on a Petition by members having not less than ten percent or more of the voting power in the Company, declare proceedings of a general meeting to be invalid by reason of a *material defect or omission in the notice* **or** ***irregularity*** *in the proceedings of the meeting, which* ***prevented members from using their rights effectively*** can declare such proceedings or part thereof invalid and direct holding of a fresh general meeting provided that such a Petition must be filed within 30 days of the impugned meeting. The above provision has two parts or remedies available to the set of shareholders as above. The first relates to a *material defect* or *omission* in the notice of the said meeting. Now in this case, it cannot be the case of the Petitioners that the notice of the meeting in question had any material

defect or omission as for that the Petitioners ought to have approached the Court as soon as the notice of the meeting was issued. Though there is no bar as to impugning the notice itself subsequently, but I am of the view that if there had been any *material defect* or *omission* in the notice, then apparently, it was incumbent upon such members not to wait and let the meeting being carried on; but must challenge the said notice immediately and before the meeting is held. In the instant case they had enough time to do so. Notwithstanding this observation and even otherwise, while confronted, learned Counsel for the petitioners could not put forth any convincing argument so as to justify this conduct of the Petitioners. In fact, his focus was more on the manner in which the meeting was proceeded and allegedly denied Petitioners their right(s) permitted by the Act. The Petitioners grievance is that the proceedings of the meeting were conducted in a manner which has affected their rights as members / shareholders of the Company in question and therefore, the proceedings of the impugned meeting must be declared invalid and a fresh meeting be convened. For that learned Counsel for the Petitioners has relied upon the letters addressed by the Petitioners and the supporting affidavit of one of the Petitioners and has argued that no proper opportunity was accorded to the Petitioners, whereas, the disclosure regarding related party transactions was not in accordance with the Act or the 2018 Regulations.

7. As to the grievance of the Petitioners, it would be advantageous to refer to the notice of the meeting and the Special Business Agenda Item as well as the provisions of Section 134(3) of the Act which require certain disclosures while issuing notice in respect of the Agenda Item in question: -

"NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the 27th Annual General Meeting of the Members of Artistic Denim Mills Limited (the Company) will be held on Saturday, October 19, 2019 at 4:00 p.m at the premises of the Institute of Chartered Accountants of Pakistan (ICAP), Chartered Accountants Avenue, Clifton, Karachi to transact the following business.

Special Business

6. To approve / ratify the transactions with Related Parties as disclosed in note No.39 to the Financial Statements for the year ended June 30, 2019 by passing with or without modifications(s), the following resolutions as an Ordinary Resolutions:

"RESOLVED that the related parties' transaction with:

(i) Casual Sportswear;
(ii) Artistic Apparels (Private) Limited;
(iii) Artistic Fabric & Garment Industries (Private) Limited;
(iv) DL1961 Premium Denim Inc.;
(v) Premium Distributors;

Carried out in the normal course of business during the year ended June 30, 2019 be and are hereby ratified and approved."

"FURTHER RESOLVED that the Board of Directors of the Company be and is hereby authorized to approve all transactions carried out and to be carried out in the normal course of business during the ensuing year ending June 30, 2020 including but not limited to the following related parties' i.e.:

(i) Casual Sportswear;
(ii) Artistic Apparels (Private) Limited;
(iii) Artistic Fabric & Garment Industries (Private) Limited;
(iv) DL1961 Premium Denim Inc.;
(v) Premium Distributors;

Carried out in the normal course of business during the year ended June 30, 2019 be and are hereby ratified and approved."

STATEMENT UNDER SECTION 134(3) OF THE COMPANIES ACT, 2017.

This statement set out the material facts concerning the Special Business, given as agenda item no. 6 of the Notice to be transacted at the 27th Annual General Meeting of the Company.

ITEM NO. 6 OF THE AGENDA:

Artistic Denim Mills Limited is engaged in manufacture and sale of rope dyed denim fabric, yarn and value added textile products. The Company in the normal course of business carries out transactions with its associated companies. Summary of transactions carried out during the year with the associated companies is as follow:

S. No.	Name of Associated Company	Concerned / Interested Director	Nature of Transactions	Rupees in "000"
1	Casual Sportswear	Mr. Muhammad Ali Ahmed	Sales	84,731
2	Artistic Apparels (Pvt) Ltd.	Mr. Muhammad Yousuf Ahmed	Others	116
3	DL1961 Premium Denim Inc.	Mrs. Maliha Faisal	Sales Reimbursement of expenses	795,809 51,435
4	Artistic Fabric & Garment Industries (Pvt) Ltd.	Mr. Muhammad Iqbal Ahmed	Sales Purchases Services rendered	56,463 46,958 7,760
5	Premium Distributors	Mr. Muhammad Ali Ahmed	Sales	64,625

Majority of Directors of the Company were interested in these transactions due to common directorship in the associated companies, the required quorum of directors seemingly could not be formed for approval of these transactions which have to be approved by the shareholders in the General Meeting. Therefore, the transactions carried out during the financial year ended June 30, 2019 are being placed before the shareholders for their consideration and approval / ratification.

All related party transactions, during the year 2019, were reviewed and approved by the Audit Committee and the Board in their respective meetings. The transactions with related parties were carried out at arm's length prices determined in accordance with the comparable uncontrolled prices method.

The concerned Directors abstained while the Board approved the above transactions in accordance with the requirements of relevant provision of the Companies Act, 2017 and Listed Companies (Code of Corporate Governance) Regulations, 2017.

The above transaction with related parties are an ongoing process and will remain continued in future.

None of the Directors other than the concerned Directors have any direct or indirect interest in the above mentioned associated companies and have no interest in the above business, other than shareholders of the Company."

"134. Provisions as to meetings and votes. — (1) .....

(2) .....

(3) Where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected, shall be specified in the statement."

8. Section 134(3) of the Act requires that where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of according an approval to any document, the time and the place where the document may be inspected, shall be specified in the statement. The agenda item 6 in respect of the special business of the 27th Annual General Meeting was in respect of approval and ratification of the transactions with related parties as disclosed in note 39 to the financial statements for the year ended 30.06.2019 by passing with or without modifications, the resolutions as ordinary resolutions which in essence, sought approval of related party transactions with five different companies with a further resolution authorizing the Board of Directors of the Company to approve all transactions already carried out and to be carried out in the normal course of business during the ensuing year ending on 30.06.2020 in respect of these five companies. Along with this Agenda, statement under Section 134(3) of the Companies Act was also annexed and to that extent there is no dispute; however, it is the case of the Petitioners that this statement is not in compliance with Section 134 ibid read with the 2018 Regulations. On perusal of the statement under Section 134(3), it

reflects that members are being informed that the Company is engaged in manufacture and sale of rope dyed denim fabric, yarn and value added textile products and in the normal course of business has carried out transactions with its associated companies and then summary of transactions carried out with these companies has been stated. Out of these five companies it is only Company at serial No.3 on which the entire crux of the Petitioners case rests. The Director in this Company is also a Director in the Respondent Company and is also the wife of the Chief Executive of the Respondent Company. It would not be out of place to mention that Company at serial No.2 also has Petitioner No.1 as its Director; however, the Petitioners Counsel while confronted as to the interest of Petitioner No.1 has not been able to satisfactorily respond as to why on the one hand the Petitioners have impugned a particular transaction with DL 1961, on the ground of improper or incomplete disclosure, and on the other, remaining transactions with same degree of disclosure (including that of Petitioner No.1's interest) approved in the same meeting have not been disputed. The notice further states that the related party transactions during the year 2019 were reviewed and approved by the Audit Committee first; and thereafter, the Board of Directors in their receptive meeting. Petitioner No.1 is admittedly also a Director of the Respondent Company. Now the question arises that if the case of the Petitioners is that no proper disclosure as required in law was made by the Company in respect of related party transactions pertaining to DL 1961, then why the Petitioner No.1 was not aggrieved of such approval by the Board of Directors and as to why he chose not to challenge or impugn such approval by the Board of Directors in accordance with the Act. Nor the Court has been assisted as to any other action taken by Petitioner No.1, for having been aggrieved of the approval of the same by the Board of Directors. In fact, it could not have been done, as Petitioner No.1 is also one of the beneficiaries of such approval. Not only this, the Petitioners never came before the Court by impugning the notice of the meeting and the alleged non-disclosure or incomplete disclosure as the case may be, allegedly in violation of Section 134 ibid as contended. It further appears that the case of the Company is that all transactions with related parties were carried out at arm's length prices determined in accordance with comparable uncontrolled price method, whereas, the auditors of the Company have also examined these transactions so disclosed in the financial statements for the year in question as mentioned against note 39 and have not raised any objection as alleged. So in all fairness, on a bare perusal of the notice of the meeting as well as the statement annexed thereto, there does not appear to be any defect or material irregularity or for that matter omission so as to declare the meeting as invalid on the ground of impugned notice being defective. As already observed, this is notwithstanding the fact that this argument regarding alleged invalidity of the notice in question was not pressed upon with any convincing argument.

9. The related party transactions are regulated under Section 208 of the Act, including its compliance, the mode and manner in which these transactions can be entered into by the Company. Section 208 reads as under: -

> **"208. Related party transactions. —** (1) A Company may enter into any contract or arrangement with a related party only in accordance with the policy approved by the board, subject to such conditions as may be specified, with respect to-
>
> (a) sale, purchase or supply of any goods or materials;
> (b) selling or otherwise disposing of, or buying, property of any kind;
> (c) leasing of property of any kind;
> (d) availing or rendering of any services;
> (e) appointment of any agent for purchase or sale of goods, materials, services or property; and
> (f) such related party's appointment to any office or place of profit in the Company, its subsidiary Company or associated Company:
>
> Provided that ***where majority of the directors are interested in any of the above transactions, the matter shall be placed before the general meeting for approval as Special Resolution***:
>
> Provided also that nothing in this sub-section shall apply to any transactions entered into by the Company in its ordinary course of business on an arm's length basis."

10. In terms of this provision a Company may enter into any contract or arrangement with a related party only in accordance with the ***policy approved by the board***, subject to such conditions as may be specified, relating to sale, purchase or supply of any goods or materials; selling or otherwise disposing of, or buying, property of any kind; leasing of property of any kind; availing or rendering of any services; appointment of any agent for purchase or sale of goods, materials, services or property; and such related party's appointment to any office or place of profit in the Company, its subsidiary Company or associated Company. The first proviso to this Section states that where ***majority of the directors*** are interested in any of the above transactions, the matter shall be placed before the general meeting for approval as a Special Resolution, whereas, the second proviso states that nothing in this sub-section shall apply to any transactions entered into by the Company in ***its ordinary course of business on an arm's length basis***. On an overall examination of this provision it reflects that firstly, it is only the *approval of the Board of Directors* which has to be obtained (subject to any conditions as may be specified) and ordinarily it is not that all related party transactions are to be approved by the members / shareholders of a Company. And perhaps that is for a very valid reason. The Company otherwise cannot run its affairs if all such business transactions are to be approved by the members or shareholders. It has been left to the

Board of Directors to decide and approve. The other exception is if the transaction is at arm's length viz. a viz. its value and pricing, then it can also be approved by the Board of Directors and need not be placed before the shareholders. The exception wherein it is required to be obtained from the general members in a general meeting is *when the majority of the Directors are interested in any of the transactions* mentioned at (a) to (f). And this proviso has a significant importance to the transactions in question. When the Petitioners case is examined, it appears that their grievance is primarily in respect of the transaction with DL 1961 (though a prayer is also in respect of another company; but no argument was made in that context). Nonetheless, it is an admitted position that insofar as these two independent transactions with these Companies are concerned, ***the majority of the Directors*** of Respondent Company are not interested directors. It is only one Director each (Mrs. Maliha Faisal-DL 1961 and Mr. Muhammad Ali Ahmed-Premium Distributors), who are interested Directors insofar as these companies in question are concerned. In that case, apparently, I am of the view that it is only the approval of the Board of Directors which was required to be obtained by the Company; however, perhaps, on their own or may be for the reason that the related party transactions were in respect of multiple / five different companies and all different directors were interested directors, or may be as an abundant precaution and out of transparency, the Company / Respondent thought it better to have it approved from the shareholders as well, as there are various Directors (though not majority Directors) who are interested Directors, and therefore, the first proviso applies to them. However, I am of the candid view that perhaps, this is not the case. The reason being, the law clearly provides (see Section 207 ibid) that the interested Directors will not sit in the meeting of the Board of Directors, wherein, the transaction is being approved. Therefore, the remaining Directors would not be the interested Directors and nothing can influence them so as to take any decision which might be against the interest of the Company. A safety mechanism or valve has already been placed by the law itself. It is only when majority of the Directors in respect of a particular transaction, be that with a Company for an entire year or contractual period, are interested Directors, the transaction has to be approved by the members in a general meeting. This has been safeguarded for the simple reason as the majority of the interested Directors can always approve such proposal for their own benefit and against the interest of the Company. Notwithstanding this clear position and the candid view expressed by me, in the instant matter, the Company in question has placed this matter before the general members in its annual general meeting, wherein, it has been approved by more than $3/4^{th}$ majority of the members. As to alleged non-compliance and violation of regulations 5 of the 2018 Regulations, it would suffice to observe that these regulations are applicable in respect of the decision of the Board and the Policy formulated by them in respect of related party transactions, and as noted earlier, the Petitioners have not

challenged or impugned the decision of the Board of Directors, whereas, the Petitioner No.1 acquiesced with such approval; hence, this is of no help to their case. Though not required, however, as a passing observation, I may mention that these Regulations have been though issued in terms of section 512 of the Act, read with section 208 and 209; however, apparently, they do not seem to in conformity with the express language of section 208 and 209 ibid. But as noted, for the present purposes their validity or otherwise is not in question, hence, I need not go into this question very deeply, and has restrained myself in this regard.

11. As to the argument of the Petitioners Counsel that the resolution in question could only be passed as a Special Resolution in terms of proviso to Section 208 of the Act, and not by way of an Ordinary Resolution as mentioned in the impugned notice, is though on the face of it attractive; but at the same time is not that convincing for this Court so as to declare the proceedings of the meeting in question as invalid under Section 136 of the Act. (And, once again may be noted for the sake of clarity, that this is without prejudice to my finding that in the instant matter, it was never required to be placed before the shareholders of the Company). And for this there are justifiable reasons on record. A Special Resolution is defined in Section 2(66) of the Act and reads as under: -

> "**2. Definitions.** (66)
> "Special Resolution" means a resolution which has been passed by a majority of not less than three fourths of such members of the company entitled to vote as are present in person or by proxy or vote through postal ballot at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a Special Resolution has been duly given;
> Provided that if all the members entitled to attend the vote at any such meeting so agree, a resolution may be proposed and passed as a Special Resolution at a meeting of which less than twenty-one days' notice has been given;"

12. A Special Resolution has been defined as a resolution which has been passed by a majority of not less than 3/4th of such members of the company entitled to vote as are present in person or by proxy or vote through postal ballot at a general meeting of which not less than twenty one days' notice specifying the intention to propose the resolution as a Special Resolution has been duly given and the proviso entitles the members to vote and pass a resolution as a Special Resolution at a meeting of which less than 21 days' notice has been given. So in essence there are two requirements for passing of a resolution as a Special Resolution; the one being, it has to be voted by at least 75% of the members present in the meeting; and second, a notice of 21 days has to be given if a resolution is to be passed as a Special Resolution. Again there is a further exception available in that the period of 21 days can be curtailed; however, this is not the issue in hand. On the contrary, Ordinary Resolution as defined in Section 2(46) ibid

can be passed by a simple majority at any general meeting. It is not in dispute that the resolution in question was passed at the 27th Annual General Meeting for which a 21 days' notice was given to all shareholders of the company. From the minutes placed before the Court, it reflects that there were 68,242,416 votes in favour of the resolution in question and 10,212,900 votes against it. In percentage terms it is 87% in favour of the resolution and 13% against it. It needs to be appreciated that the requirement of 75% votes in favour is not from the entire shareholding of the company; but from amongst the shareholders present in a particular meeting. There is a misconception generally that a Special Resolution can only be passed when there are 75% votes of the total shareholding of a Company in favour of such a resolution. In fact, any Special Resolution can be blocked by 25% of the entire shareholding of a Company, if they are present in any general meeting and in this case it is an admitted position that Petitioners only have 14.45% shares according to their own pleadings. In any case, if they wanted a resolution not to be passed, it was their responsibility to bring in the meeting, 25% shareholding of the Company and they would have been easily successful in blocking any such resolution. When both these conditions i.e. 21 days' notice and 75% or more votes coming in favour of the resolution are fulfilled; then merely for the fact that in the notice of the impugned meeting, inadvertently, or for any other reason, the use of word *ordinary resolution* becomes meaningless inasmuch as the resolution in question has been passed as a Special Resolution by fulfilling the two legal requirements, and therefore, this objection also fails and appears to be misconceived and is of no legal effect. It is also pertinent to note that the impugned meeting was required to conduct its business as per Section 132 read with 134(2) of the Act, which provides that in the case of an annual general meeting, all business to be transacted shall be deemed to be special, other than consideration of financial statements and the reports of the board and auditors; declaration of any dividend; election of directors and appointments of auditors; whereas, in the impugned notice the related party transactions and its approval has been sought as a special business. Therefore, on this account also there is no irregularity, either in the impugned notice or the impugned meeting.

13. As to the passing of a Special Resolution by 3/4th majority of the members present in a general meeting, and not by the entire shareholding of the Company, reliance may be placed on the case of ***Kazmia Trust (Regd.) v Kaz International (Pvt.) Limited*** (**2009 CLD 1713**), wherein, a learned Single Judge of this Court has been pleased to hold as under;

> 10. The next question that needs to be examined with reference to a special resolution is as to how such a resolution is passed, since the petitioner claims that no such resolution could have been passed in its absence. A special resolution must be

> passed "by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy" at the meeting concerned. As the highlighted words make clear, the resolution is not, as the petitioner misapprehends, to be passed by three-quarters of the total shareholders of the company. The required percentage 75% is to be considered on the basis of the members actually present at the meeting. A shareholder holding (or more than one shareholder who together hold) more than 25% of a Company's shares can always block a special resolution, provided that he or they show up at the meeting and vote against the resolution. If, however, such shareholder(s) choose to stay away, they do so at their own peril, since if more than three quarters of the members actually present at the meeting vote in favour of the resolution it will be passed as a special resolution. To take a somewhat extreme example: if a Company has 1,000 ordinary shares held by 100 members, but at the relevant meeting only 4 shareholders, together holding 250 shares, show up, and three of the shareholders vote in favour of the resolution with one opposed, the resolution will pass as a special resolution (see Gower's Principles of Company Law, 5th edition 1992, pg. 519, from which this example is adapted). Mere absence therefore, is not enough. If a shareholder (or shareholders) have or control more than 25% of the shares of a company, and thus have a veto power over special resolutions, they must actually exercise this power for it to be effectual.

14. Undoubtedly, the mode and manner in which a Company has to be run is controlled and regulated by the Act. This special law has provided a mechanism as to how a Company is to be run and how the management can make decisions through Board Meetings, shareholders meetings and the minimum requirement of voting. As discussed earlier, the meeting in question has already passed a Resolution with more than 75% members supporting it. In that case it would not be appropriate to keep the Company hostage on the whims and desire of the Petitioners. The method and procedure of Corporate Governance are provided under the Act, and the rules made thereunder, and if this is allowed in the manner as pleaded, then no Company would ever be in a position to run and manage its affairs as it is only the members and the minimum requirement of shareholding which enables the Company to smoothly run its affairs. The present shareholding of the Petitioners, in any manner, cannot block passing of any Special Resolution, and therefore, even if a fresh meeting is ordered, as contended, it would not serve any useful purpose. It further appears that notice of the impugned meeting was also sent to the regulator i.e. SECP who have never objected either to the notice of the meeting or the statement annexed with it in terms of section 134(3) of the Act. In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitle to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes[1]. The

[1] Macdougall v Gardiner [1875] 1 Ch.D.13 (L. J. Mellish)

rule in **Foss v Harbottle [1843) 67 ER 189]** also embraces a related principle, that an individual shareholder cannot bring an action in the courts to complain of an irregularity (as distinct from an illegality) in the conduct of the company's internal affairs provided that the irregularity is one which can be cured by a vote of the company in general meeting[2]. The Courts in such matters have always been reluctant and cautious to act in favor of a complainant. And there are variety of reasons to do so. Since, in this case it has come on record that except wanting a fresh meeting, there is nothing with the Petitioners to otherwise block passing of the Resolution in question, it would be undesirable to allow their truly personal action if this does nothing; but leads to disruption of Corporate activity or to wasteful and irrelevant litigation. It is clear and settled that the Courts are exceedingly reluctant to give relief where to do so would provide no concrete results. See ***Bentley-Stevens v. Jones*** **[1974] 1 W.L.R. 638.]** The plaintiff sought an interlocutory injunction to prevent action on a resolution which he alleged to be bad for want of notice of the meeting. The plaintiff failed. It was held that since the majority could correct the irregularity by a fresh vote, it would have been wrong for the Court to have given interlocutory relief.

15. Lastly, I with judicial sensitivity and anguished anxiety, with utmost reverence, demureness and humility at my command, cannot restrain myself from making a comment on the conduct of Petitioners and the way they have narrated facts regarding pending litigation between the parties in the memo of this petition. I am not sure as to who is responsible for this, i.e. either they, or their Counsel; but since a supporting affidavit has been filed on behalf of the Petitioners, I am compelled to presume that is on their specific instructions. Admittedly, the Petitioners herein, have, in the past also impugned approval of identical related party transactions for the year ended 30.06.2017 by filing JCM No.32 of 2017; but failed to get any favorable orders, either ad-interim or thereafter. Apparently they have not pursued their Petition any further. In the memo of this petition, at Para 3 and 4 there is disclosure of various litigation pending between the Petitioners and Respondent; however, relevant for the present purposes is the last portion of Para 4. The entire disclosure reads as under;

> "3. Litigation is pending before this Honorable Court in respect of the affairs of the Respondent. The Respondent and its majority shareholder have filed Suit No. 620 of 2017 against the Petitioners and preventing them from exercising various rights, including the right to requisition an extraordinary general meeting. The Respondent has also filed Suit No. 1506 of 2019 through which they are seeking to prevent the Securities and Exchange Commission of Pakistan from proceeding upon a show cause notice and hearing in respect of investigating the affairs of the Respondent under Section 256 of the Companies Act, 217, which was being initiated upon the legitimate complaint of the Petitioners. The Respondent has obtained ad interim orders in respect of both these

[2] Prudential Assurance Co Ltd v. Newman Industries Ltd and others [1982] 1 All ER 354

actions from this Honorable Court and litigations in this respect remain pending. Through filing these suits, the Chief Executive Officer and majority shareholder of the Respondent is attempting to perpetuate his stranglehold and domination of the Respondent and preventing the Petitioners and other minority shareholders from exercising their rights as provided under the law.

4. The Petitioners apart from defending the litigation initiated by the Respondent and its majority shareholders, have filed a Petition under Section 286 of the Companies Act, 2017 for prevention of oppression of the minority shareholders and mismanagement of the Respondent which has been listed a J. M. No. 29 of 2017 and **also a petition under Section 136 of the Companies Act, 2017 to declare the proceedings of the 25th annual general meeting of the Petitioner held on 28.10.2017 invalid, which petition is listed as J.M. 32 of 2017**. The aforesaid litigations remain pending before this Honorable Court."

16. It is worth noting that despite such disclosure, no document of any such proceedings have been annexed with this petition. Why this has been done, is not clear. Presumably, may be not to burden the Court with voluminous papers. If that is the case, then it really needs to be appreciated. But apparently, and again with respect, I may state that this is not the case, exactly. Since, the issue is identical in nature except the financial year, it ought to have been disclosed as a primary litigation and not at the end of the Paragraph. Second, all documents ought to have been annexed in respect of this pending issue. And lastly, since this very Bench had heard this petition on the first date of hearing when an ad-interim order was obtained, it cannot, nor has been pleaded while responding to this objection by the Respondents Counsel, that any such reference was made to any of the pending proceedings, more specifically, in respect of identical issue of related party transactions. Keeping this aside, I am sure that no such reference was made at the time of seeking an ad-interim order in this matter. This, in my candid view, is though a disclosure, but I would call it a smart disclosure. However, in any case, not to be appreciated in any manner. It further appears that a similar transaction was entered into by the Company in the year 2018 which was also approved in the same manner and the Petitioners chose not to impugn an identical transaction. Why they did so is unclear as once again in 2019 they are before the Court. Moreover, the Petitioners are after only one related party transaction, leaving aside others, which have also been approved in an identical fashion in the same meeting, with the same statement of disclosure as required under section 134(3) of the Act. This also includes one approval in their own favor i.e. Artistic Apparel (Private) Limited having Petitioner No.1 as its interested Director. This conduct on the part of the Petitioners does not seems to be logical as well as appreciable. All related party transactions have been approved in an identical manner, with identical disclosure; hence, if one of it is fine, then others must also be deemed to be fine. The petitioners are not justified in blowing hot and cold at the same time. This does not reflect positively on the part of the Petitioners, in any manner; rather the

conduct appears to be revengeful and to obstruct smooth running of the Company in question. It is also not in dispute that the Company is admittedly making profits from its operations, including that with these related parties as well, and is also distributing dividends to its Directors as well as members; therefore, even otherwise, the allegations leveled by the Petitioners does not appear to be attractive or justified in law, so as to compel this Court to exercise any discretion in their favour.

17. In view of hereinabove facts I am of the view that the Petitioners have failed to make out a case for indulgence; hence, this petition fails and is accordingly dismissed with pending applications.

Dated: 16.04.2020

J U D G E

Arshad.