IN THE HIGH COURT OF SINDH AT KARACHI

J. C. M. No. 03 of 2018

Petitioners:	**Dr. Muhammad Imran Qureshi and Others Through Mr. Zahid F. Ebrahim, Advocate.**
Respondent No. 1:	**Mohammad Asif Through Mr. Abid S. Zuberi along with Ms. Sana Valika Advocates.**
Respondent No. 2:	**Mohammad Arif Through Mr. Ovais Ali Shah Advocate.**
Respondents No. 3 & 4:	**Dr. Parveen Malik and Dr. Arsalan Malik Through Mr. Faisal Siddiqui and Muhammad Vawda Advocates.**
Respondent No. 5:	**National Medical Centre private Limited Through Mr. Sarmad Hani Advocate.**
Dates of hearing:	**26.09.2018, 23.10.2018, 13.11.2018, 16.01.2019, 06.02.2019, 05.03.2019, 09.05.2019, 12.09.2019, 02.10.2019.**
Date of Judgment:	**18.11.2019.**

J U D G M E N T

Muhammad Junaid Ghaffar J. This is a Petition under Section 286 of the Companies Act, 2017 seeking the following prayer(s):-

i. "Declare that the operation and management of the Respondent No.5 Company are being conducted in violation of the Articles and Memorandum of Association of the Company; that the same has been usurped by the Respondent No.1 in a manner oppressive to the Petitioners and also prejudicial to public interest;

ii. Declare that there is complete deadlock amongst the main shareholders of the Respondent No.5 and that circumstances exist for the winding up of the Respondent No.5 therefore the shares of the Respondents be sold to the Petitioners at fair market value;

iii. Appoint a leading audit firm to conduct a forensic audit into the affairs of the Respondent No.5 and its main assets the NMC Hospital;

iv. Appoint Receiver to take charge of the day to day affairs of the Respondent No.5 and its main asset the NMC Hospital pending final disposal of this Petition;

v. Award costs of these proceedings; and

vi. Grant any other relief deemed appropriate by this Hon'ble Court."

2. The three Petitioners before this Court claim to be owners to the extent of 33% shareholding in Respondent No.5 ("Company") and it is their precise case that Respondents No.1 to 4 are now running the Company in an oppressive manner, without fulfilling the statutory / legal requirements as contemplated in law; therefore, the Company is not being run in a proper manner; hence, instant Petition.

3. Learned Counsel for the Petitioners has contended that though the quantum of shareholding to the extent of 33% as claimed by the Petitioners is disputed by the Respondents; however, they do admit that the Petitioners shareholding is to the extent of 25%; hence, this Petition is otherwise competent under Section 286 of the Act; that earlier in respect of change / manipulation of the shareholding of the Petitioners, J. M. No.18/2014 was filed before this Court, which is pending, wherein, ad-interim order dated 17.06.2014 is operating; that the Respondents No.1 & 2 are one group of shareholders, and Respondents No.3 & 4 are a second group of shareholders, whereas, the Petitioners are the third group; that Respondents No.1 & 2 are in fact controlling the entire affairs of the Company which is managing a big hospital in Karachi; that it is the case of the Petitioners that no meeting of the Board of Directors has been held in the last 10 years, and similarly no shareholders meeting as well; that the Directors have not prepared and filed any annual reports; that in the past 10 years no audited accounts have been finalized; that in the entire response of the Petition no such document has been annexed, either by the Directors / Respondents, or for that matter by the Company; that though Petitioner No.2 is involved in the management as alleged by the Respondents; however, he has no control over any such affairs of the Company; that despite making huge profits, the Company is not paying proper dividend / share to the Petitioners, whereas, to avoid documentation, the transactions are being carried out in cash; that it is a case of deadlock amongst the respective shareholders and so also mistrust; that the Petitioners stance is that a forensic audit of the accounts of the Company be conducted so as to overcome this deadlock enabling proper management of the Company; that earlier Respondent No.4 had filed J.M. No.19/2014 which was on identical terms as to J. M. No.18/2014, whereas, both had made similar allegations against Respondents No.1 & 2 regarding manipulating the extent of shareholding; however, J. M.19/2014 was withdrawn surreptitiously without knowledge and consent of the Petitioners; that even Respondents No.3 & 4 had also filed J. M. No.6/2016 seeking inspection and investigation into the affairs of the Company; however, the same was also withdrawn on

12.1.2018, again without knowledge and consent of the Petitioners; but all these Petitions reflects that there are allegations against the management and the manner in which the Company in question is being run by Respondent No.1 & 2; that admittedly, the conduct is inappropriate, hence, corrective orders may be passed by this Court; that it is the case of the Petitioners that management of the hospital is in the hands of unqualified persons which may cause danger to the lives of the people; that no proper response has been filed by the Company / Respondents as to the failure to comply with various provisions of the Companies Act, 2017, except that an ad-interim order passed in J. M. No. 18/2014 has restrained the Company from doing so; however, this is incorrect as the Court has not completely restrained the Respondents; that dummy accounts have been prepared and managed, whereas, even those accounts have not been audited; that in view of these submissions the Petition be allowed by passing appropriate orders as may be deemed fit by this Court. In support of his contention he has relied upon the case reported as ***Light Metal and Rubber Industries (Pvt.) Limited and others V. Sarfraz Qaudri*** **(2011 CLD 1485).**

4. Learned Counsel for Respondent No.1 has contended that the Company is fully operational, functional, profit-making entity and is being run in accordance with law, relevant rules and regulations according to its Articles of Association; that it runs a hospital and has a clear operational record of nearly 2 decades amply establishing the fact that its affairs are being run in a professional manner; that Respondent No.1 has dedicated his life towards the functioning and running of the hospital; that Respondent No.1 has been instrumental in investing money and making it operational from the very beginning; that the onus is on the Petitioners to prove the allegations levelled against the Respondents; that the Petitioners have miserably failed to bring on record any material to substantiate their allegations; that it is settled law that the Petitioners should succeed on the strength of their own case; that the word oppression has to be decided on a case to case basis as it has not been defined under the law; that it is settled law that in order to seek relief under Section 286 of the Act the person claiming oppression has to establish that they have been constrained to submit to a conduct which lacks in probity or to a conduct which is unfair; that Respondent No.5 is a Company and the affairs of the Company are being governed by its Board of Directors, Board meetings are convened and all the parties on the Board are jointly responsible for the decisions made with respect to the Company; that it has not been denied that petitioners are availing benefits from the Company in accordance with their shareholding; that Petitioner No.1 is not a permanent resident of Pakistan and resides in USA; that petitioner No.3 is not even a shareholder of the Company and therefore has no locus standi to file instant Petition; that Petitioner No.2 is actively involved, fully aware and participates in the

daily management, administration, working and financial affairs of the Company, whereas, petitioner No.2 regularly attends his office and in fact sits in the same office, next to the answering Respondent; that Petitioner No.2 is a singly authorized signatory of all bank accounts of the Company including but not limited to Habib Metro, Bank Al-Habib and in fact has been regularly signing cheques even after the filing of this petition; that he has even given loans to consultants/doctors on behalf of and from the Company fund(s); that the Petitioner No.2 has also availed facility of a personal car for his own usage from the Company funds; that Petitioner No.2 is actively involved in deciding and signing maintenance contracts, imports, buying and purchasing of expensive machinery etc. required for the Company; that he also has access to everything including FBR records, daily bank reports, daily reports of the Company, audit reports etc.; that vide Board Resolution dated 1-2-2010 he was also given the power to acquire land on behalf of the Company; that Books of accounts have been regularly prepared and maintained and the Company is compliant of the rules and regulations of SECP and FBR; that Petitioner No.2, himself is one of the signatories of the AGM held in the year 2013 and the Minutes clearly reflect that the audited accounts of the Company along with the auditor's report were presented, reviewed and adopted; that denial of his signatures during the course of the proceedings, was rather shocking and is put to strict proof thereto; that the Petitioners alleged claim that over the past decade the Company has not held a single general meeting of its shareholders is incorrect, whereas, if it was so, then why no action was taken until 2018 when instant petition was filed; that even SECP was never approached for such purposes; that the substratum of the Company is intact and the objective for which it was incorporated, still continues; hence no case for indulgence is made out; that there is no complete deadlock amongst the main shareholders; that the ingredients for winding up are not available, and therefore it will not be just and equitable to do so; that winding up of a Company in the case of the wishes of the shareholders, strained relationships, and dispute amongst the shareholders is extremely flawed and no more a good law; that a private limited Company is to be treated as one and not like a partnership at will and reliance is placed on ***In re: Kruddson Ltd. Karachi V. In re: Kruddson Ltd. Karachi*** **(PLD 1972 Karachi 376)**; that the entire controversy pertains to a dispute in shareholding as a result of the share transfer which is already a subject matter of JM No.18 of 2014, hence, this petition is not maintainable until the said J.M is decided; whereas, vide Order dated 17-06-2014 passed in JM No.18 of 2014 there is a restraining order from filing returns and documents on behalf of the Company, with SECP; that the collective shareholding of the Petitioner No(s) 1 & 2 along with the shares appearing in the name of their late father (Mr. Sultan Qureshi) is approximately 25 percent since they had transferred 8 percent of their shares to the Respondent No.1; that it is trite law that

inter-se dispute between the shareholders is not ad-judicable under Section 286 of the Companies Act , 2017; and reliance may be placed on the case of ***Muhammad Hussain V. Dawood Flour Mill*** **(2003 CLD 1429 Karachi)** and ***Muhammad Aijaz Tahir V. Federation of Pakistan*** **(2014 CLD 1683 Lahore);** that the petition is based on factual controversies, regarding denial of signatures on the documents/annexures as annexed by the Respondents, therefore, cannot be resolved in this case; and in support reliance may be placed on the case of ***Mian Javed Mir V. United Foam Industries Pvt. Limited Lahore*** **(2016 CLD 393 SC);** that insofar as statement of Mr. Hammad Dosslani under S 161 of the CRPC is concerned it is submitted that he is not even a party in the instant proceedings and therefore the answering Respondent is not in a position to state upon the reasons and circumstances under which the said statement was made, whereas, this Statement made under s. 161 of the CRPC does not have any evidentiary value and is not admissible and was in fact made in respect of another matter which has no nexus with the instant case; that the accusations in respect of siphoning of funds etc. are vehemently denied and all such allegations upon the answering Respondent are based on surmises and conjectures which has no value in the eyes of law; that the plea that what harm will an audit cause is untenable because in the first place, the burden rests on the petitioners to make out a case of oppression, mismanagement or fraud, which they have been unable to do so, whereas, section 286 is a provision incorporated for extreme circumstances and as an alternative to winding up and empowers the Court to order purchase of shares of one party by another and therefore, it cannot be used in support of pleas that no harm will be caused by an audit; that Petitioner No.2 did not join the previous JM filed by his mother and brother being J.M. No.18 of 2014, or the one filed by the Respondents No.3 & 4 being J.M. No. 19 of 2014, which were filed on the same day through the same attorney as at that time the Petitioners No. 1 and 3 and Respondent No. 3 & 4 were all acting together as a group, and this reflects that Petitioner No.2 did not joined these proceedings in 2014 as then he was of the opinion that the Company is not being run in an oppressive manner and only came before this Court when he discovered that Respondent No.1, 3 and 4 have settled their disputes; that Petitioner No.2 has also filed Suit No.10 of 2018 to stop their alleged settlement on 2.1.2018, whereas, this JCM was filed after one month on 01.02.2018; that it is clear from this conduct that Petitioner No.2 has no other grievance, other than a fear or apprehension that a majority is formed within one family; that Company is running a hospital with hundreds of patients, whereas, the Petitioners have failed to make out a case for interference by this Court as it will disrupt the working of the hospital; that alternate remedy is available with them under the Companies Ordinance / Act; that for pleading oppression, heavy burden rests upon the Petitioners, whereas, in view of the dicta laid down in the case reported as ***Ladli Prasad Jaiswal v The Karnal Distillery***

Co., Ltd., (**PLD 1965 SC 221**) a minority shareholder cannot be included into the management of the Company; therefore, in view of these submissions instant petition is liable to be dismissed.

5. Learned Counsel for Respondents No.3 & 4 has contended that this Petition is misconceived and is liable to be dismissed as the grievance of the Petitioners is already a subject matter of an earlier Petition bearing JCM No.18/2014; that prayer No.(ii) is identical; requesting sale of the shares to the minority; that the Petitioners want to buy and throw out the 66% shareholding of the Respondents; that in law it ought to have been the other way round as the Petitioners should be bought out by the Respondents; that nothing has been brought on record by the Petitioners in their petition to justify any audit of the accounts of the Company; that by way of ad-interim and interlocutory orders the Petitioners are seeking the maximum and entire relief in the Petition which admittedly, cannot be granted; that the Petitioners ought to have invoked the provisions of the Companies Act by making complaint to SECP and therefore, this Petition is premature; that there is nothing on record to suggest that the Company is being run in an oppressive manner; that even various Civil Suits are pending between the parties and therefore, this Petition is misconceived; that the allegations in respect of siphoning off funds from the accounts of the Company is devoid of any merits, whereas, Petitioner No.2 has all the access to the accounts and the financial matters of the Company; that even otherwise this is not a ground for winding up, whereas, the Courts are always reluctant to enter into internal administration of the Company when there is no complaint made to SECP; that the matter involves various disputed facts; hence, even otherwise this Court lacks jurisdiction; that there are precedents even to the extent that non-holding of meetings does not fall or amounts to oppression. In support of his contention he has relied upon ***Muhammad Suleman Kanjiani and 3 others V. Dadex Eternit Ltd. and 4 others*** **(2009 CLD 1687)**, ***Tasnim and another V. Rustom Ali and others*** **(2000 CLC 364)**, ***Mian Waqar uddin and 3 others V. Messrs United Industries Limited and 11 others*** **(2017 CLD 696)**, ***Shahamatullah Qureshi V. Hi-Tech Construction (Pvt) Ltd.*** **(2004 CLD 640)**, ***Khawer Hanif V. Imran Hanif and others*** **(2017 CLD 1788)** and ***Pervaiz Arshad & another V. Rauf Textiles and Printing Mills (Private) Limited and 132 others*** **(2019 CLD 72)** ***and Registrar of Companies v Pakistan Industrial and Commercial Leasing Limited*** **(2005 CLD 463).**

6. Learned Counsel for Respondent No.5 has contended that Petitioner No.1 is a non-resident Pakistani who permanently resides in the USA and is an absentee in the functioning of the Company; that Petitioner No. 2 is instrumental in running the hospital and is involved in taking day to day decisions in matters pertaining to the Hospital; that

Petitioner No.3 is a stranger to the present proceedings who is neither a shareholder, nor a director in the Company; that false allegations have been made in the petition that Respondent No.1 has usurped control over the day to day financial affairs of the Company; that in fact it is the Petitioner No.2 who exercises greater financial autonomy in the matters of the Company; that regular meetings of the Board of Directors are held and it has been resolved that three directors namely, Respondent No.1, 2 and Petitioner No.2 could singly sign to process any transaction on behalf of Company; that enough documents have been placed on record by the Respondents evidencing that Petitioner No.2 exercises financial discretion by paying salaries of employees, entering into contracts on behalf of the Company; paying taxes, procuring machinery etc.; that nothing has been placed on record through the petition to substantiate the allegations of oppression and mismanagement; that prayers of the petition are self-contradictory; that denial of signatures by Petitioner No.2 on certain documents makes it necessary to record evidence, therefore, the present petition cannot be decided on merits; that in terms of Section 290 of the Companies Ordinance, 1984 and Section 286 of the Companies Act, 2017, the Court has to form an opinion that the Company is being run in an *"oppressive manner"* and then in order to rectify the wrongdoing the Court has to pass an order regulating the affairs of the Company; however, such an order can only be made in the clearest of cases which do not raise or involve disputed question of facts or complex issues, which according to the learned Counsel is not the case here; hence, the prayer in the petition cannot be granted, whereas, term 'oppression' has not been defined in law, and the Court has to decide oppression and / or mismanagement on a case-to-case basis, as settled in the case reported as ***Registrar of Companies v. Pakistan Industrial and Commercial Leasing Limited*** (**2005 CLD 463**) and ***Najamuddin Zia v. Asma Qamar*** (**2013 CLD 1263**); that the issue of shareholding and its percentage and quantum is a matter in dispute in J.M 18 of 2014, which has to be decided first; therefore, this petition is premature and in support he has relied upon the cases reported as ***Muhammad Anwar Monno v. Waqar Monno*** **(1987 CLC 1943 at 1946 A)** and ***Muhammad Fikree v. Fikree Development Corporation Ltd*** **(1992 MLD 668 at 670 A)**; that that meetings of the Board of Directors have been held regularly, whereas, the Petitioners remained silent for 10 years; hence are not entitled for the relief claimed; that audit of the Accounts of the Company are being regularly conducted by the approved Auditors, whereas, if not, then the remedy is available by approaching SECP.

7. Learned Counsel for Respondent No.2 in addition to adopting the arguments made on behalf of Respondent No.1 & 5 has contended that all requisite meetings are regularly conducted and attended to by the Directors; that the case of the petitioners is premised on false pleadings; that Petitioner No.2 is actively involved in running the

affairs of the Company and is even signing cheques singly; that no supporting documents are annexed with the memo of petition to substantiate the allegations; that under section 6(12) of the Companies Act, 2017, this Court is fully competent to take note of such false pleadings and assertions; that if a petition for rectification of share register is pending, then no further petitions are maintainable; that the alleged fraud in respect of change in shareholding is not a ground for maintaining the present petition under s.286 ibid in view of the dicta laid down in the case reported as ***Muhammad Hussain v Dawood Flour Mill*** (**2013 CLD 1429**); that the only prayer is in respect of having audit of the Company; however, an alternate remedy is available to them under s.256 of the Act and the Commission can be approached in view of the dicta laid down in the cases reported as ***Malik Aziz ul Haq v Crystaline Chemical Industries (Pvt) Limited*** (**2016 CLD 970**) and ***Registrar of Companies v Pakistan Industrial & Commercial Leasing Limited*** (**2005 CLD 463**); that s.286 of the Act is an alternative to a winding up petition and if no case for winding up is made out, then this provision cannot be invoked; that even through the rejoinder affidavit of the petitioners the defects pointed out in respect of misstatements by them, have not been cured; hence, no reliance can be placed on their pleadings.

8. While exercising his right of rebuttal, learned Counsel for the Petitioners has reiterated his arguments that neither any meeting of the Board of Directors has been held; nor any Annual General Meeting or Extraordinary General Meeting has ever been held in the last 10 years; that neither any election of Directors; nor appointment of auditors has been made as required in law; that Respondent No.3 is the Chief Executive of the Company in question but despite serious allegations levelled, no counter affidavit or reply has been filed by her; that J.C.M.18/2014 is not an impediment in the grant of this Petition as the same was in respect of rectification of share register against illegal transfer of shares done by Respondent No.1; that the ad-interim order of the Court in that matter does not restrain the Company from making compliance of the statutory provisions; but is only restricting the Company in relation to the changes made by the Respondents in the shareholding of the members in the Company; that the accounts produced with the counter affidavits of respondents are not audited accounts; but are even unsigned and unaudited; hence, do not fulfill the requirement of the Companies Act, 2017; that no right shares offer was ever accepted by the Petitioners and no money was ever paid; therefore, the question that right shares were allotted to the shareholders is unfounded; that if the contention of the Respondents to the effect that Petitioner No. 2 is involved in the management of the Company is correct then when Petitioner No. 2 is himself before the Court and asking for a forensic audit, on the ground that accounts are not being properly maintained, then the Respondents are not justified in raising any

objection to that effect; that Mr. Hammad, the son of Respondent No.1 has been appointed as a Director, whereas, he in his 161 Cr.P.C statement in some other proceedings, has stated that he is an employee and not a shareholder or a Director of the Company; that the alleged minutes of the Board Meeting filed only for 2 years are forged and fabricated, whereas, at the relevant time Petitioner No.1 was never in the country, hence, this alone is a valid ground for granting the Petition.

9. I have heard all the learned Counsel and perused the record. The precise facts have been stated hereinabove and for the sake of repetition, it may be noted that the Petitioners No.1, 2 & 3 (legal heirs of late Dr. Sultan Qureshi) hold 33.3% shares, which (quantum) is though disputed by the Respondents as according to them they only have approximately 25% shareholding; however, for the present purposes, neither the said quantum of shareholding is the subject matter of the Petition; nor the admitted quantum of 25% shareholding or so, affects the very maintainability of this petition as otherwise, the petitioners have the minimum required shareholding to maintain a Petition under Section 286 of the Act. It further appears that Respondents No.1 & 2 is one set of shareholders having 33.3% shares, whereas, Respondents No.3 & 4 are collectively holding 33.3% shares, being the other set of shareholders. It further appears that Respondent No. 3 is the Chief Executive of Respondent No. 5/ Company. The Company was established in 1983 and owns and operates a medical facility known as *National Medical Centre Karachi*. The pattern of the shareholding (though disputed by Respondents) of the parties as stated in the Petition is in the following terms:-

Shareholder	**No. of Shares**	**Percentage**
Dr. Parveen Malik (Respondent No.3)	11,668	16.6%
Arsalan Malik (Respondent No. 4)	11,666	16.6%
Mohammad Asif (Respondent No. 1)	11,666	16.6%
Mohammad Arif (Respondent No.2.)	11,666	16.6%
Dr. Mohammad Sultan Qureshi	7,778	11.1%
Dr. Muhammad Salman Qureshi (Petitioner No.2)	7,778	11.1%
Mohammad Imran Qureshi (Petitioner No. 1)	7.778	11.1%

10. It is the case of the Petitioners that after the death of Dr. Sultan Qureshi in 2007, though Respondent No.3 continues to be the Chief Executive of the Company, it is in fact Respondent No.1 and his family who has taken the effective control of the financial affairs of the Company, including the books of accounts and records. It is not in dispute that Petitioner No.2 who is also a Director of the Company, continuous to be involved in the day to day management of the hospital as a medical Director; but it is his claim that he has no access or control over the financial affairs and despite his best efforts for having transparency in the financial affairs of the Company, Respondent No. 1 has refused access to the books of accounts and other records. It is further case of the Petitioners that earlier Petitioners No.2 & 3 had filed JCM No.18/2014, when they had discovered that Respondents No.1 & 2 have made certain fraudulent transfers of the shareholding for their personal benefits and on 17.06.2014 an ad-interim order has been passed by this Court in the said J.C.M in the following terms:-

> "1) Learned counsel for the petitioners states that there is imminent likely hood that the record of the Company be manipulated by the Respondents No.1&2. In view of the submissions made by the learned counsel for the petitioner, application is granted.
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> 2) Notice.
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> 3) Learned counsel for the petitioner's states that the Respondents No.1&2 are making changes in the record of the Respondent No.3 Company and filing certain documents and returns on behalf of the Respondent No.3 Company with Respondent No.7 and also trying to create third party interest in the shareholding of Respondent No.3 Company.
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> In view of the submissions made by the learned counsel for the petitioners, the Respondent Nos.1&2 are restrained from manipulating the record of the Respondent No.3 Company and crating any third party interest in the shareholding of Respondent No.3. The Respondents Nos. 1&2 are further restrained from filing any returns and documents on behalf of Respondent No.3 Company with the Respondent No.7, till the next date of hearing. Adjourned, to come up after vacation."

11. For the present purposes, it is the case of the Respondents that they are acting in accordance with law, and are following as well as fulfilling the requirements of the Statutory provisions including the Act in question; however, at the same time, they are restrained by virtue of the aforesaid orders to the extent of making compliance with SECP regarding filing of returns etc. It is their case that the Petition is misconceived and liable to be dismissed as according to them once it is admitted that Petitioner No. 2 is actively involved in the management of the Company; then he cannot, at the same time come to the Court seeking the relief(s) he has prayed for. In support of this contention they have placed on record various material, including payments of perks and privileges to Petitioner No.2 as well as signing of cheques independently by him,

and making decisions in the day to day affairs of the Company / hospital. The Respondents case is collectively to the effect that there is no oppression in the management of the Company; hence, the requirements of Section 286 ibid are lacking insofar as the present Petition is concerned. There is another objection by one of the Respondents Counsel and that is to the effect that during pendency of an earlier Petition bearing J.C.M No.18/2014 instant Petition is otherwise not maintainable.

12. Instant Petition has been filed by the Petitioners seeking the following prayer(s);

> "i) Declare that the operation and management of the Respondent No. 5 Company are being conducted in violation of the Articles and Memorandum of Association of the Company; that the same has been usurped by the Respondent No. 1 in a manner oppressive to the Petitioners and also prejudicial to public interest;
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> ii) Declare that there is complete deadlock amongst the main shareholders of the Respondent No. 5 and that circumstances exist for the winding up of the Respondent No. 5 therefore the shares of the Respondents be sold to the Petitioners at fair market value;
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> iii) Appoint a leading audit firm to conduct a forensic audit into the affairs of the Respondent No. 5 and its main asset the NMC Hospital;
>
> iv) Appoint Receiver to take charge of the day to day affairs of the Respondent No. 5 and its main asset the NMC Hospital pending final disposal of this Petition;
>
> v) Award costs of these proceedings; and
>
> vi) Grant any other relief deemed appropriate by this Hon'ble Court."

13. The petition has been filed in terms of Section 286 of the Companies Act, 2017, (s.290 of the erstwhile Companies Ordinance, 1984) which reads as under:-

> **"286. Application to Court**.- (1) If any member or members holding not less than ten percent of the issued share capital of a Company, or a creditor or creditors having interest equivalent in amount to not less than ten percent of the paid up capital of the Company, complains, or complain, or the Commission or registrar is of the opinion, that the affairs of the Company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the members or any of the members or the creditors or any of the creditors or are being conducted in a manner that is unfairly prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the Commission or registrar may make an application to the Court by petition for an order under this section.
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> (2) If, on any such petition, the Court is of opinion-

> (a) that the Company's affairs are being conducted, or are likely to be conducted, as aforesaid; and
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> (b) that to wind-up the Company will unfairly prejudice the members or creditors;
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> the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the Company's affairs in future, or for the purchase of the shares of any members of the Company by other members of the Company or by the Company and, in the case of purchase by the Company, for, the reduction accordingly of the Company's capital, or otherwise.
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> (3) Where an order under this section makes any alteration in, or addition to, a Company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, the Company shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; and the alterations or additions made by the order shall be of the same effect as if duly made by 154 resolution of the Company and the provisions of this Act shall apply to the memorandum or articles as so modified accordingly.
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> (4) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a Company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the Company to the registrar for registration; and if the Company makes default in complying with this sub-section, the Company and every officer of the Company who is in default shall be liable to a penalty of level 1 on the standard scale.
>
> (5) The provisions of this section shall not prejudice the right of any person to any other remedy or action."

14. The aforesaid provision provides that if any member or members holding not less than *ten percent* of the issued share capital of a Company, complains, or the Commission or the registrar is of the opinion, that the affairs of the Company are being conducted, *in an unlawful* or *fraudulent manner*, not provided for in its memorandum, *or in a manner oppressive to the members*, or are being conducted *in a manner that is unfairly prejudicial to the public interest*, such member or members or, the creditor or creditors, as the case may be, the Commission or Registrar may make an application to the Court by petition for an order under this section and on any such petition, *the Court is of opinion that the Company's affairs are being conducted, or are likely to be conducted, as above*; and *that to wind-up the Company will unfairly prejudice the members or creditors*; the Court may, with a view to bringing to an end the matters complained of, *make such order as it thinks fit*, whether for *regulating the conduct of the Company's affairs in future*, or for the purchase of the shares of any members of the Company or by the Company and, in the case of purchase by the Company, for, the reduction accordingly of the Company's capital, or otherwise. The precise powers which have been conferred upon the Court through this provision are in addition to the powers

conferred for winding up of the Company; however, the circumstances to invoke this provision are entirely different which may prevail upon the Court for passing of an order for winding up of the Company. In fact this provision has to be invoked or can be invoked when the Court comes to the conclusion that a winding up order would be unfair and may prejudice the members or the creditors. Insofar as the present facts are concerned, it is not in dispute; nor is it the case of the Petitioners that the Company is not making profits or they are not earning profits from the Company. Though they dispute the quantum of such income; however, they cannot; nor have they prayed for passing of a winding up order. The prayer, if any, is only supplemental to these proceedings so as to invoke the jurisdiction of the Court in terms of s.286 ibid. Moreover, this provision is peculiar in its nature and appears to have been provided by the legislature by conferring powers upon the Court to apply the same in any case by examining the very peculiar facts and circumstances prevailing in that case. There cannot be any hard and fast rule for invoking this provision as it is primarily dependent upon the individual facts of a case which have been brought by the parties invoking the said provision. The prayer and the reliefs sought in this petition as reflected hereinabove, are apparently, what s.286 prescribes, and are more or less akin to what the Act has provided for. Hence, it cannot be said that this petition has no nexus with the said provision of the Act. Insofar as the present case is concerned, the only grievance which may attract attention of the Court is in respect of the compliance of the mandatory / statutory requirements of the Act as well as rules framed thereunder, and whether, the Respondents are justified in not making such compliance pursuant to order dated 17.06.2014 passed in J. C.M. No.18/2014. For that, first one has to look and examine the contents of the petition as well as the prayer, and then see as to what is the effect of such an ad-interim *exparte* order passed on the very first date of hearing by the Court. The prayer in the said J.C.M. No.18/2014 is as under:-

i. "Declare that the affairs of the Respondent No.3 Company are being governed and managed by the Respondent No.1 and 2 illegally, unauthorized, fraudulently, unethically and arbitrarily, in a manner highly oppressive to and against the interests of the Petitioners and the other shareholders.

ii. Declare as illegal all changes in the shareholding of the Respondent No.3 post 2007 made by the Respondent No.1 in connivance with the Respondent No.2 and in particular the fraudulent transfer of shares belonging to the Petitioner No.1 and other shareholders of the Respondent No.3;

iii. Declare as illegal all actions of the Respondent No.1 in connivance with the Respondent No.2, whereby he has fraudulently increased or attempted to increase the share capital of the Respondent No.3 to his sole advantage;

iv. Declare that the returns filed by the Respondent No.1 and No.2 post 2007 are fraudulent and of no legal effect;

v. Declare that the Respondent No.1 has made fraudulent entries in the Register of Members, Register of Transfers and filings before the Respondent No.7 and therefore made himself liable to be disqualified as Director and for penal action in accordance with the provisions of 1984 Ordinance;

vi. Order the immediate rectification and restoration of the Register of Members and Register of Transfers of the Respondent No.3 to its original state as at the year ended 2007, prior to the making of fraudulent entries therein;

vii. Restrain the Respondent No.1 and No.2 from making any further entries in the Register of Members and Register of Transfers of the Respondent No.3 or from filing any additional documents on behalf of the Respondent No.3 with the Respondent No.7;

viii. Restrain and suspend the Respondent No.1 from acting as the Director of the Respondent No.3 till final disposal of this Petition;

ix. Award costs of the these proceedings; and

x. Grant any other relief deemed appropriate by this Hon'ble Court."

15. Perusal of the aforesaid prayer reflects that the primary grievance of the Petitioners who are also Petitioner No.1 & 3 in the instant Petition is to the effect the Respondents have changed the complexion of the shareholding of the Company. Their precise case in that petition is that certain entries have been made in the register of the Company of which they are seeking rectification in terms of s.152 of the then Companies Ordinance, 1984 (now s.126 of the Companies Act, 2017). It is also noteworthy to mention that Petitioner No.2 is also a Respondent in that Petition. When the ad-interim order dated 17.06.2014 as above, is read in juxtaposition to the prayer as well as the memo of petition, then it transpires that the intention of the Court while passing such order could not have been to permanently restrain the Company from filing any returns and making compliance of the statutory provisions of the Companies Act with SECP. The precise case as brought before the Court was to the effect that Respondents No.1 & 2 are making changes in the records of the Company and are filing documents and returns with SECP and so also creating third party interest in the shareholding of the Company. The Court after hearing the learned Counsel for the Petitioners has restrained Respondents No.1 & 2 from manipulating the record of the Company and so also from creating any third party interest in the shareholding of the Company and they have been further restrained from filing any returns and documents on behalf of the Company with SECP. It appears that one of the arguments of the learned Counsel for the Respondents in support of non-filing of the audited accounts with SECP is based on the above order;

however, when this order is read in juxtaposition and more so with the contents and prayer in the petition, it appears that this argument is misconceived for a number of reasons. A restraining order of the above nature, cannot *per-se* be taken as a defence to non-compliance of a statutory provision. It is to be seen that the order of the Court is in respect of the contention of the Petitioner's Counsel, and when it is read as a whole, then the only inference which can be drawn is that the Company has been *restrained from filing any such returns which could have effect on the shareholding of the Petitioners and or others*, so that the interest of all is protected. It further restrains creation of any third party interest; however, only in respect of the Petitioner's share(s) or for that matter of the Company. It is not that the Company is restrained from filing any returns and making compliance of the statutory requirements as well. This could not have been the intention in any manner. Nonetheless, even if it is so, and the contention of the Respondents is accepted without prejudice that the Court had the intention of restraining the Company from filing any returns, then at the same time, the Company was only restrained from filing these returns with SECP; but in any manner they were not restrained from preparing such returns on yearly basis, including the audit of the accounts, holding meeting of the Board of Directors and shareholders, and so also the annual general meeting and approval of the same in the manner as provided in law. In that case, the Company ought to have brought on record all these documents and may have contended, that though they have made compliance of all these requirements; but have been restrained from filing the same before SECP. Admittedly, this is not the case of the Company nor of any of the other Respondents. It would also be of relevance to see the response of SECP is this context. While responding to Para 10 of the Petition wherein it has been alleged that no auditor has been appointed for the past 10 years, it has been stated that *"No comments on the contents of corresponding paragraph except that the company has not reported holding of Annual General Meeting since the year 2014"*. And on this it has already been argued by the Respondent's Counsel that no compliance of the statutory requirements were made by the Company in view of the restraining order in J.C.M No.18/2014; to which, with respect I am unable to agree.

16. Section 220 of the Companies Act, 2017, (Section 230 of the erstwhile Companies Ordinance, 1984) provides the mode and the manner in which the books of accounts are to be maintained by a private and a public Company. The law provides that every Company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statements for every financial year which give a true and fair view of the state of the affairs of the Company, including that of its branch office or offices, if any. Sub-section (3) thereof further provides that the books of account and other books and papers maintained by the Company within Pakistan shall

be open for inspection at the registered office of the Company or at such other place in Pakistan by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director. Sub-section (4) further provides that when an inspection is made under sub-section (3), the officers and other employees of the Company shall give all assistance to the Directors in connection with the inspection which the Company is reasonably expected to give. Sub-section (5) further provides that such books of accounts of the Company for the last 10 years are to be kept in all good order. Sub-sections (6) and (7) provide that if a Company fails to comply with any of the requirements of this section, *every director, including the Chief Executive and Chief Financial Officer of the Company may be liable for punishment* ***which includes imprisonment*** and fine as well. Similarly Section 221 of the Act provides for inspection of books of accounts by the Commission, whereas, in terms of Section 223 the Board of Directors of every Company must lay before a Company in the annual general meeting its financial statement for the period for the preceding financial year which must be laid within a period of 120 days following the close of the financial year of a Company. In a similar manner Section 225 provides for the contents of the financial statements which shall give a true and fair view of the state of affairs of the Company, as contained in the third Schedule for different classes of Company. Section 226 mandates and provides a duty upon the Directors' to prepare a report for each financial year of the Company and thereafter, section 227 gives a requirement for contents of the Director's report and statement of compliance. Section 223 then provides that the audited financial statements after approval by the Company in its annual meeting, are to be forwarded to the Registrar of the Companies. Now all these provisions have been incorporated so as to reflect transparency in the affairs of the Company so that the rights and interests of a shareholder / member or for that matter a Director are not prejudiced and as a result thereof, do not cause any financial loss to such member / shareholder and or Director.

17. In the present matter, though an attempt has been made to bring on record certain financial statements and accounts; however, it appears that no proper accounts have not been maintained for the last many years; and secondly, even if it is so, this Court has not been assisted by any such *audited accounts / financial statements* of the Company in terms of the above provisions; rather a plea has been taken that the Company has not done so pursuant to the ad-interim order passed in J.C.M. No.18/2014. Now if a clear picture in respect of the allegations so attributed by the Petitioner against the Company and the Respondents vis-à-vis. the financial statements of the Company are not before the Court for any scrutiny or assistance, then in such a

situation, the Court would always be justified in asking the Company to get its financial statements prepared and audited as per the requirement under the Companies Act 2017 and the rules thereunder. To that extent there could be no cavil or objection by any of the parties. Maintaining accounts and having them audited is a pre-requisite / requirement for continuing a Company duly incorporated under the Act. The purpose and the reason to enact the Companies Act is to regulate the affairs of the Company in a manner which is not only transparent; but at the same time not to prejudice any of the interested parties. A learned Single Judge of this Court in the case reported as ***Mst. Khursheed Ismail and others V. Unichem Corporation (Pvt.) Limited and others*** **(1996 CLC 1863)** had the occasion to dealt with a similar type of situation and the relevant observations regarding maintaining accounts under the then Companies Ordinance, 1984 is as follows:-

> "Mr. Mansoor Ahmed Khan then submitted that section 233 of the Companies Ordinance, 1984, requires the Directors of the every Company to lay before the Company in Annual General Meeting, at least once in every calendar year, a balance-sheet and profit and loss account and that the balance-sheet (Annexure-D to CMA 2509/92) is in compliance of that provision. He submits further that the books of accounts mentioned in section 230 of the Ordinance are different from the accounts required to be present under section 233. I must confess that I have failed to understand the purport of this argument. Section 230 requires, by subsections (1) and (2) thereof, every Company to keep at its registered office or, as the case may be, branch office, proper books of accounts with respect to the matters specified therein; and subsection (3) provides that proper books of accounts shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the Company. Further, subsection (4) of section 230 provides that the books of account and other books and papers of every Company shall be open to inspection by the directors during business hours; and by subsection (6) every Company is required to preserve in good order books of account relating to period of not less than ten years preceding the current year or, in the case of a Company incorporated less than ten years before the current year, such books for the entire period preceding the current year. **The object of these provisions clearly is to enable the directors at any time to obtain, by inspection of the books, a true view of the state of affairs of the Company. If, therefore, a Company fails to keep such books up to date, the object would be defeated. The respondents have failed to comply with the provisions of section 230 and it is not open to them to argue that they having complied with section 233, are absolved from complying with the provisions of section 230."**

18. The primary grievance of the Petitioners in this matter is related to the fact that the Respondents who are in majority as a group, are running affairs of the Company in a manner which is against the statutory provisions applicable thereon. The present Petition has been filed under Section 286 of the Companies Act, 2017 and insofar as the minimum threshold to the extent of 10% shareholding of the members for making a complaint under this Section is not in dispute. The law further provides that if such a complaint is made and the Court is of the opinion that the affairs of the Company are

being conducted in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the members or any of the members or are being conducted in a manner that is unfairly prejudicial to the public interest, and on such petition if the Court is of the opinion that the company's affairs are being conducted or are likely to be conducted as aforesaid and that to wind up the Company will unfairly prejudice the members or creditors; the Court may, with a view to bringing to an end the matters complained of, *make such order as it thinks fit, for regulating the conduct of the Company's affairs*. Therefore, to exercise jurisdiction under this provision firstly, one has to see the nexus of this provision with Section 301 ibid which caters for circumstances in which a Company may be wound up by a Court and it provides that (b) *if default is made in delivering the statutory report to the registrar or in holding the statutory meeting*; or (c) *if default is made in holding any two consecutive annual general meetings*; or (d) *if the Company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years*; and *(g) (iv) if the Company is run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the Company*; and for the present purposes it seems such provision applies in this matter, as apparently the requirements stipulated thereon are not being met by the Company. This would resultantly empower the Court to make an order for its winding up; however, at the same time the Court even if it is satisfied that a case for winding up is made out, may not pass such an order which may create extra hardship to its members as well as creditors, and therefore, the power under section 286 can always be exercised by the Court. It is even to the extent that if someone comes up before the Court by brining only a winding up petition under Section 301 ibid, the Court can, after going through the facts and circumstances pass an order under section 286 by exercising the same on its own in the given facts. To make an order under Section 286 the Court has to be satisfied that the Company's affairs are being conducted in a manner warranting exercise of such jurisdiction, and secondly, that the facts justify passing of a winding up order on the ground that it was just and equitable that the Company should be wound up; and lastly, that the winding up order would unfairly prejudice the petitioner and other members, whereas, at the same time it is also not necessary to establish any personal prejudice for seeking any relief under section 286 ibid.

19. The word "oppression" has not been defined either in s.286 or in the Companies Act, 2017; nor, it is defined in similar Acts of other jurisdiction(s). It in fact corresponds to s.397 of the Companies Act, 1956 in India (now replaced with the Companies Act, 2013), and s.210 of the English Companies Act of 1948. The leading case on 'oppression' under the English jurisdiction is the case of House of Lords in ***Scottish Co-op. Wholesale Society Ltd. V Meyer***. **[1959] AC 324**. While discussing oppression and

relying upon the dictionary meanings of the same it has been observed that ["the appellant society could justly be described as having behaved towards the minority shareholders in an 'oppressive' manner, that is to say, in a manner "burdensome, harsh and wrongful"]. It has been further observed that the effect of s.210 ["warrants the Court in looking at the business realities of the situation and does not confine them to a narrow legalistic view"]. The law Lords have been further pleased to hold that relationship in private companies or for that matter in a society like the appellant before them, is though not in law, a partnership; however, there should be utmost good faith between the constituent members; and finally, it was said that Court ought not to allow technical pleas to defeat the beneficent provisions of s.210.

20. In the case from Scottish jurisdiction reported as ***Elder v Elder & Watson Ltd.,*** **1952 Scottish Cases 49**, it has been observed that ["the phrase oppressive to some part of the members acquires a certain color from its collocations with such stronger expressions as 'intent to defraud', 'fraud', 'misfeasance', or 'other misconduct' and the essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and of violation of the conditions of fair play on which every shareholder who entrusts his money to Company is entitled to rely"]. It has been further observed that ["it is not lack of confidence springing from oppression of a minority by a majority in the management of the Company's affairs, and oppression involves, I think, at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as shareholders"].

21. One needs to understand the true intent and spirit of this provision i.e.s.286 ibid. It has been incorporated as an alternative to a winding up order; rather is a substitute for the Court by avoiding a winding up order. The fact that a Company is prosperous and makes substantial profits is not always an obstacle to its being wound up, if the facts and circumstances so warrant and the Court has come to such conclusion. However, by means of s.286 ibid, an alternative is available so as not to order for a winding up of a Company. And this is for good of all shareholders and members of the Company. The Respondents in this case say that the Company is making profits (though belied from the accounts placed on record); however, while accepting this fact of being in profits, the Court would most likely want to give another chance to the members and shareholders to still run the Company and avoid its winding up. And to this s.286 caters. In private Companies the relationship is similar to that of a partnership and this was precisely what has been argued by the learned Counsel for Respondent No.1, when he placed much stress on the case of ***Ladli Prasad (Supra)***. Under the law of partnership, utmost

goods faith is due form every partner towards every other partner, and if any dispute arises between them in respect of any business transaction, then the partner at the receiving end will be required to show not only that he had acted in accordance with law; but that his conduct will bear to be tried by the highest standard of honor.

22. The next question which arises is that whether any action in contravention of law (like not preparing accounts in conformity with the statutory provisions) can be *per-se* termed as oppressive. Though Respondent's Counsel have made an attempt to take shelter under the ad-interim order dated 17.6.2017 passed in J.C.M No.18/2014; however, this has not impressed me and is rather misconceived as already noted hereinabove. Apparently, the Company and Respondents are acting contrary to the statutory provisions insofar as Financial Statements and their approval by the members / shareholders is concerned, and for that there is no plausible defense put forth. A resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interest of the shareholders and the Company.[1] In the case of ***Elder v Elder (Supra)*** it has been held as under;

> The decisions indicate that conduct which is technically legal and correct may nevertheless be such as to justify the application of the 'just and equitable' jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. Where the 'just and equitable' jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the Company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy.

23. The case law in this peculiar situation is not entirely settled and is dependent on the facts of an individual case and it cannot be held that every illegality is *per-se* oppressive or that illegality of an action does not bear upon its oppressiveness. The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support inference that the law was violated with a mala fide intention or that such violation was burdensome, harsh and wrongful. But a series of illegal acts following upon one another can, in the context, lead justifiably to the conclusion that they are part of the same transaction, of which the object is to cause or commit the oppression of persons against whom they are directed.[2]

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[1] S.M.Ganpatram v Sayaji Jubilee Cotton & Jute Mills Co. [1964] 34 Company Cases 830-831

[2] Needle Industries (India) Ltd., and Ors. V Needle Industries Newey (India) Holding Ltd. And Ors.(AIR 1981 SC 1298

24. As to the accounts of the Company being maintained in accordance with the Act and rules as well as guidelines of SECP or not, nothing much is required to be stated. Apparently, the accounts which have been placed through the comments of respondents are contradictory in their stance. At one place it is stated that no accounts have been finalized after 2014, as the order of this Court in J.C.M No.18/2014 restrains them, whereas, the Company itself has annexed certain accounts for the years 2014 onwards; however, on their perusal it reflects that they are neither signed by the Chief Executive nor by any of the Directors, whereas, law requires that it must be signed by the Chief Executive and at least one Director, which is not case in these accounts placed on record. Moreover, surprisingly, there is no response in the shape of comments or counter affidavit by Respondent No.3 / Chief Executive of the Company in this matter, and again surprisingly the response on behalf of the Company has been filed by Respondent No.2 against whom the allegation is that he along with Respondent No.1 is controlling the Company in an oppressive manner. And to add to it, the accounts so placed on record from 2014 are continuously showing losses, whereas, in the comments by the Respondents including the Company, it has been reiterated that the Company is in profits and no case for winding up is made out.

25. Insofar as the case of ***Ladli Prasad (Supra)*** as vehemently relied upon by the learned Counsel for Respondent No.1 is concerned, it may be of relevance to take note that much water has flown under the Bridge since that pronouncement of the Hon'ble Supreme Court. The law has seen a considerable change in all these times and one has to strictly go through the facts of that case as well as the law being applicable, if that case is to be followed as an authority and a binding precedent. At the relevant time the provision(s) of s.290 of the Companies Ordinance, 1984, and s.286 of the Companies Act, 2017 were not on the statute. Like any other case, it is an authority for its own facts and must be considered in that context. It cannot be applied generally and across the board to the facts of every case that comes up for the winding up of a company on the ground that the directors or shareholders had locked horns and the dispute amongst them has crippled the functioning of the company.[3]

26. As to the objection regarding adjudication of disputed facts as raised by the learned Counsel for Respondents I may say that this contention is bereft of any merits or substance, as it is only a prayer for conducting a forensic audit of the accounts to which the present petition is primarily premised. I therefore conclude that disputed questions of fact, even if intricate, complicated or difficult, arising in the context of a petition under section 290 [section 286] can be taken up and decided by the company

[3] Mian Waqar-Ud-Din and 3 others v United Industries Limited (2017 CLD 696)

court and indeed, I am respectfully of the view that the Court cannot absolve itself of its obligation to decide the case before it on such a ground. The objection taken in this regard by the contesting respondents cannot be accepted.[4]

27. A plain reading of section 290 of the Companies Ordinance [s.286 of the companies Act, 2017] is sufficient to suggest that an application under section 290 of the Companies Ordinance could be made by any of the parties to the winding up petition if the requirements of subsection (1) of section 290 are in-existence and also empowers the Court to make such order as may be deemed fit with a view to bring an end to the matters complained of either by regularizing the affairs of the Company in future or directing the purchase of shares of the oppressed members of the company either by the company or by the other members if the winding up of the company would unfairly prejudice the share-holders and creditors of the company.[5]

28. In view of hereinabove facts and circumstances of the case I am of the view that a case has been made out by the Petitioners at least to the grant of prayer for audit of the Company's Accounts. I am of the view that this will not cause any prejudice to any of the parties, whereas, it would rather fulfill the requirements of law. Accordingly, this petition stands disposed of / allowed along with all pending applications in the following terms;

(i) Learned Official Assignee of this Court is appointed as Commissioner to carry out a forensic audit of Respondent No.5 through any one of the Big Four Audit / Chartered Accountant Companies i.e. (i) PWC-A. F. Ferguson & Co., (ii) KPMG-Taseer Hadi & Co., (iii) Ernst & Young-Ford Rhodes, & (iv) Deloitte Touch Tohmatsu-Yousuf Adil Saleem & Co., for the period starting from 1.7.2014 to 30.6.2019.

(ii) The Chief Executive, Company Secretary as well as Chartered Accountant / Accountant(s) shall assist the Commissioner / Auditors in all manners as may be necessary and any obstacle and or hindrance on their part shall be view as contempt of Court's orders. They shall provide all documents of the Company as may be found necessary by the Commissioner / Auditor for such purposes.

(iii) The fee of the Commissioner is settled tentatively at Rs.500,000/- out of which 50% amount shall be paid to him immediately by the Petitioners which is subject to reimbursement from the Company, whereas, the balance 50% shall be paid by the Company subsequently.

(iv) Once the Auditors quote their fee, the same is to be settled by the Commissioner in consultation with the Chief Executive, whereas, if needed the matter be placed before the Court for appropriate order(s).

[4] Mst. Neelofar Shah and another v Ofspace (Pvt.) Limited (2013 CLD 114)
[5] Tasnim v Rustom Ali (2000 CLC 364)

(v) The exercise of forensic audit be carried out preferably within a period of 90 days from the date of this order.

(vi) The Commissioner or the Company as the case may be, may at any time apply to the Court for directions, if any, for completion of the task assigned to the Auditors.

(vii) The parties to the petition, may, at any time approach this Court for settlement of their dispute, if any and as may be advised, and any directions and or observations in this order, shall not be an impediment in granting and or considering the same.

29. The petitions stands allowed / disposed of in the above terms along with all pending applications.

Dated: 18.11.2019

J U D G E