

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui, CJ  
Mr. Justice Omar Sial

C.P. No. D-8554 of 2019

Unity Foods Ltd.  
Versus  
Security & Exchange Commission of Pakistan & another

Date of Hearing: 11.09.2024

Petitioner: Through Mr. Arshad Tayebally along with Mr. Abdul Ahad Nadeem Advocates.

Respondents: Through Raja Qasit Nawaz Khan Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, CJ.- Petitioner impugned an order passed under section 221 of the Companies Act, 2017 in terms whereof three officers of respondent No.1 were appointed as inspectors to inspect books of accounts, books and papers of the company/petitioner in all respects and to furnish report accordingly.

2. In substance the point of grievance of Mr. Arshad Tayebally, learned counsel appearing for the petitioner, is that the exercise of powers conferred under section 221(1) of Companies Act, 2017, cannot be extended to investigate of the affairs of the Company by the inspectors so appointed via impugned order. It is pleaded that the powers under section 221(1) of the Companies Act, 2017 could only be limited to the extent of inspection of books of accounts etc. which are otherwise identified judicially in relation to the inspection of books of accounts by the commission.

3. We have heard learned counsel for the petitioner in detail as well as Raja Qasit Nawaz Khan, appearing for the respondents, who in order to resolve the controversy has made his submission that it may be seen

within and/or confined to Section 221 of Companies Act, 2017. We have also perused material available on record.

4. The contours of Section 221 of Companies Act, 2017 is apparently and substantively limited to the extent of inspection of books of account by the Commission which books of accounts shall be open to inspection by any officer authorized by the Commission in this behalf, if, for the reasons to be recorded in writing the Commission considers it necessary to do so. All such events recognized by law enabling the inspection to be inevitable, it was then the duty of every director, officer or other employee of the company to produce to the person making inspection under subsection, all such books of accounts and books and papers of the company in his custody or under his control and to furnish him with any such statement, information or explanation related to the affairs of the company, as the said person may require of him within such time and at such place as he may specify. Section 221 also requires that every director, officer or other employee of the company to give to the person making inspection under this section all assistance and facilitation in connection with the inspection which the company may be reasonably expected to give.

5. The only bother of concern for Mr. Tayebally was that the order impugned in this petition is somehow refers to the powers of the inspectors whose names have been identified in the order and hence the scope of “inspection by inspectors” as being appointed, is beyond the parameters of Section 221 and the order that could have been passed thereon.

6. The concern of Mr. Tayebally is well noted that the scope of Section 221 is limited to the extent of inspection within the frame as stipulated therein whereas the scope of inspectors relates to and/or surrounds to the investigation and for related matters, which were to be

given effect, is through Section 256 to 262 of Companies Act, 2017 and not section 221.

7. We are certain that the Commission has issued the show-cause notice dated 27.12.2019 followed by the impugned order under section 221 of Companies Act, 2017 dated 30.12.2019 followed by letter of the same date of one of the inspectors so appointed seeking certain information, after realizing its frame and under no stretch of imagination it could deemingly be extended to the provision of inspectors having different eventualities to initiate such actions.

8. Section 221 of Companies Act, 2017 is in fact pari materia to Section 231 of Companies Ordinance, 1984 whereas the powers of investigation could be seen under section 256 to 258 of Companies Act which are pari materia to Section 263 to 265 of the 1984 Ordinance. The two provisions were thoroughly discussed by the Bench Supreme Court in the case of Saif Power Limited<sup>1</sup> wherein while allowing the appeal it was observed as under:-

*“9. ....We find that the High Court has misconstrued the requirements of an inspection under section 231 of the Ordinance and that of an investigation, and has blurred the difference between the two. This is evident from the fact that the requirements of section 231 of the Ordinance have been connected with section 268 of the Ordinance which is incorrect as only directors, officers, and employees are obligated to assist in an inspection whereas section 268 of the Ordinance obligates every person, officer, staff and people who have dealings in connection with the affairs of the company to assist in the investigation. An inspection is not into the affairs of the company and only limited to books of account and related books and papers. As already stated, inspection is administrative in nature where regulatory compliance is the objective and not a probe into allegations against how the affairs of the company are being managed. Under the circumstances, the impugned judgment has not appreciated the scope of inspections under the Ordinance and its difference from an investigation. Furthermore, the justification with reference to the lack of a report of statutory auditors is totally misplaced.”*

9. Thus, we could only limit the applicability of the order impugned before us to the extent of frame provided under section 221

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<sup>1</sup> 2023 CLD 466 (Saif Power Limited v. Federation of Pakistan & others)

of Companies Act, 2017. This order however shall not be construed as curtailment of any rights of SECP insofar as contemplated actions under other provisions of Companies Act, 2017, if the situation demands.

10. With the above understanding of law, the petition stands disposed of along with pending applications, including contempt application.

Dated: 11.09.2024.

**Chief Justice**

**Judge**