

**COMPANY BENCH OF THE HIGH COURT OF AZAD JAMMU
AND KASHMIR**

Company Petition No. 01/2023.
Date of Institution 17.01.2023.
Date of decision. 26.11.2024.

Mansoor Ahmed Khan, Director of Mangla Metals (Pvt.) Ltd. R/o House
No.149-E, Street No.34, Sector I-8/8, Islamabad.

....Petitioner

Versus

1. Kohsar Hydro Ltd. through its Chief Executive Officer (CEO) having office at Plot No.226-B, Small Industrial Estate, Mirpur Azad Kashmir, Kotli Road, Jari Kas, Mirpur.
2. Mr. Zulfiqar Abbasi Chief Executive Officer (CEO) of Kohsar Hydro (Pvt.) Ltd. having office at Plot No.226-B, Small Industrial Estate, Mirpur Azad Kashmir, Kotli Road Jari Kas, Mirpur.
3. Registrar of the Joint Stock Companies and Firms, near MDA office, Tariqabad, Muzaffarabad Azad Kashmir.
4. Deputy Registrar of Companies, Mirpur Azad Jammu & Kashmir.

...Respondents

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Company Petition No. 02/2023.
Date of Institution 17.01.2023.

Mansoor Ahmed Khan, Director of Mangla Metals (Pvt.) Ltd. R/o House
No.149-E, Street No.34, Sector I-8/2, Islamabad.

....Petitioner

Versus

1. Mangla Metals Pvt. Ltd. through its Chief Executive Officer (CEO) having office at Plot No.226-B, Small Industrial Estate Mirpur Azad Kashmir, Kotli Road, Jari Kas, Mirpur.
2. Mr. Zulfiqar Abbasi Chief Executive Officer (CEO) of Mangla Metals Pvt. Ltd. having office at Plot No.226-B, Small Industrial Estate, Mirpur Azad Kashmir, Kotli Road, Jari Kas, Mirpur.
3. Registrar of the Joint Stock Companies and Firms, near MDA office, Tariqabad, Muzaffarabad Azad Kashmir.
4. Deputy Registrar of Companies, Mirpur Azad Jammu & Kashmir.

...Respondents

Company Petition No. 01/2024.
Date of Institution 29.05.2024.

1. M/s Mangla Metals (Pvt.) limited through its Chief Executive, Zulfiqar Abbasi, R/o Plot No. 226B, Small Industrial Estate Mirpur Azad Kashmir.
2. M/s Kohsar Hydropower (Pvt.) Limited through its Chief Executive, Zulfiqar Abbasi, Plot No.226B, Small Industrial Estate, Mirpur Azad Kashmir.
3. Mr. Zulfiqar Abbasi, Chief Executive of Mangla Metals (Pvt.) Limited & Kohsar Hydropower (Pvt.) Ltd. Plot No.226B, Small Industrial Estate, Mirpur Azad Kashmir.

....*Petitioners*

Versus

1. Mansoor Ahmed Khan, Director Mangla Metals (Pvt.) Limited & Kohsar Hydropower (Pvt.) Ltd, R/o House No.149-E, Street No.34, Sector I-8/2, Islamabad.
2. Commission constituted under section 3 of Companies (Adaptation) Act, 2021 through its Chairman C/O Joint Stock Companies & Firms, Near MDA Office, Muzaffarabad.
3. Registrar, Joint Stock Companies & Firms, Near MDA Office, Muzaffarabad.
4. The Manager, United Bank Limited, I/8 Markaz Branch, Islamabad.
5. The Manager, MCB, I/8 Markaz Branch, Islamabad.
6. The Manager, Bank Alfalah, I/8 Markaz Branch, Islamabad.
7. The Manager, JS Bank, I/8 Markaz Branch, Islamabad.
8. The Manager, JS Bank, I/9 Markaz Branch, Islamabad.
9. The Manager, Bank Islami, I/8-2 Branch, Islamabad.
10. The Manager, Meezan Bank, I/8 Markaz Branch, Islamabad.
11. The Manager, Dubai Islamic Bank, I/8 Markaz Branch, Islamabad.
12. The Manager, HBL, I/9 Branch, Islamabad.

...*Respondents*

COMPANY PETITIONS

Before:- ***Justice Syed Shahid Bahar, J.***

PRESENT:

Barrister Adnan Nawaz Khan, Advocate for the petitioner-Mansoor Ahmed Khan.

Barrister Humayun Nawaz Khan, Advocate for M/s Mengla Metals and Kohsar Hydro Power Ltd.- respondents, petitioner in writ No.01/2024.

Ms. Farkhanda Ibrar, Advocate/Legal Advisor for respondent No.3.

Judgment:-

Since identical law points and facts are involved in all the titled petitions, therefore, these have been clubbed up, heard together and are decided through the instant consolidated judgment.

2. Facts of the case as per petitioner in petition No.01/2023 are that the respondent No.1 company was incorporated, inter alia, to set up an industrial undertaking exclusively to carry on the business of electric power generation, its transmission to ultimate consumer, establishment of Electric Furnaces and Re-Tolling Mills with share capital of PKR 200,000,000/- (Pak Rupees Two Hundred Million) divided into 2,000,000/- (Two Million) ordinary shares of PKR 100/- each while the total paid shares of the respondent No.1 company are 1,834,000/- (1.834 Million). The Petitioner (Director of the respondent No.1 company) is subscriber of 220,080/- shares directly and 238,420/- shares through his wife Shazia Mansoor Abbasi, therefore, he is subscriber of 458,500/- shares (in total) in the respondent No.1 company out of 1,834,000/- shares, thus, he owns 25% shares in the respondent No.1 company; whereas, the respondent No.2 is the Chief Executive Officer (CEO) of company, who is responsible for managing the respondent No. 1 Company's overall operations, including delegating the directing agendas, driving profitability, managing company organizational structure, strategy and communicating with the Board of Directors (BoD) and respondents No.3 & 4 are responsible to regulate the provisions of The Companies Act, 2017 (as adapted in Azad Jammu and Kashmir vide the Companies (Adaptation) Act, 2021

[Act XV of 2021]. Petitioner averred that apart from the respondent No.1 company and the sister company, respondent No.2 is owner of/and operating three other companies namely; (i) Hadeed Traders Pvt. Ltd, wherein the respondent No.2 is Chief Executive Officer (ii) TRIED Engineering Pvt. Ltd., which is a Sham Entity created to defraud the respondent No.1 company and the CEO of this company is Mr. Tahseen Iftikhar, who is worker (front man) of the respondent No.2 while the other Director is Mr. Liu Xiaoying (a Chinese National); and (iii) Kashmir Food Pvt. Ltd, whose CEO is Zoya Zulfiqar Abbasi (daughter of the respondent No.2), therefore, practically affairs of all the companies are being operated by the respondent No.2. The petitioner vehemently contended that he felt deeply oppressed and aggrieved of the conduct of the respondent No.2 due to his fraudulent activities in operation of the business of the respondent No.1 company, including but not limited to committing the breach of trust, depriving the petitioner of reasonable profit/dividend, refusing to provide the information, mismanagement of the business, which amounts to lack of fiduciary behavior of the respondent No.2 and that may lead the respondent No.1 company to insolvency. Thus, the petitioner prefers to file the instant petition and prayed for acceptance of the same as prayed for.

3. In petition No.02/2023, the petitioner Mansoor Ahmed Khan, averred that petitioner (Director of Mangla Metals Pvt. Ltd./respondent No.1) is subscriber of 225,000/- shares out of 900,000/- paid shares in the respondent No.1 company, thus, the

petitioner owns 25% shares in the respondent No.1 company, whereas, the respondent No.2 is the Chief Executive Officer (CEO) of the respondent No.1 company, who is responsible for managing the respondent No.1 company's overall operations, including delegating and directing agendas, driving profitability, managing company organizational structure, strategy and communicating with the Board of Directors (BoD) while the respondent No.3 & 4 are responsible to regulate the provisions of the Companies Act, 2017, (as adapted in Azad Jammu and Kashmir in the year 2021). Respondent No.2 is the CEO of the Kohsar Hydro Pvt. Ltd, which is a sister company of respondent No.1 company. Petitioner averred that apart from the respondent No.1 company and the sister company, respondent No.2 is owner of/and operating three other companies namely; (i) Hadeed Traders Pvt. Ltd, wherein the respondent No.2 is Chief Executive Officer (ii) TRIED Engineering Pvt. Ltd., which is a Sham Entity created to defraud the respondent No.1 company and the CEO of this company is Mr. Tahseen Iftikhar, who is worker (front man) of the respondent No.2 while the other Director is Mr Liu Xiaoying (a Chinese National); and (iii) Kashmir Food Pvt. Ltd, whose CEO is Zoya Zulfiqar Abbasi (daughter of the respondent No.2), therefore, practically affairs of all the companies are being operated by the respondent No.2. The petitioner vehemently contended that he felt deeply oppressed and aggrieved of the conduct of the respondent No.2 due to his fraudulent activities in operation of the business of the respondent No.1 company, including but not limited to committing the breach of trust, depriving the petitioner of

reasonable profit/dividend, refusing to provide the information, mismanagement of the business, which amount to lack of fiduciary behavior of the respondent No.2 and that may lead the respondent No.1 company to insolvency. Thus, the petitioner prefers to file the instant petition and prayed for acceptance of the petition as prayed for.

4. In written reply, respondents No.1 and 2 contended that the instant petitions are not maintainable. They contended that petitioner filed both company petitions which suffer from deliberate concealment, misrepresentation and false presentation of facts and law; thus, both the petitions may be dismissed.

5. In company petition No.01/2024, the petitioners M/s Mangla Metals (Pvt.) Ltd. and others, averred that petitioner No.3 raised a company in the name of Mangla Metals (Pvt.) Ltd. in June 2000 alongwith his partner Ch. Abdul Rasheed under Companies Ordinance, 1984, for manufacturing of steel billets. The said company was incorporated to operate a steel industry based on electric generation by its sister concern M/s Khosar Hydro Power Pvt. Ltd. (Petitioner No.2) through its (1MW) Khari Hydropower Project located at Jarikas Mirpur, AJK. The petitioners further averred that in year 2003, after commencement of operation of the petitioner companies, the petitioner No.3 employed and engaged his younger brother, respondent No.1, as scrap supplier of petitioner's company No.1. Respondent No.1 continued to provide scrap supplies to the petitioner's company No.1 for eight years from 2003 to 2011 and in

September 2011, the respondent No.1 became partner in the petitioner companies with 25% shareholding. Petitioner contended that he handed over the entire management to respondent No.1 by appointing him Chief Executive Officer (CEO) of petitioner No.1/ M/S Mangla Metals on the basis of his personal shares on 25.10.2007 without any right or merit when he did not own even a single share in the petitioner No.1. Petitioners further contended that respondent No.1 remained the CEO of petitioner No.1 for almost nine years till 16.10.2015, during which all financial and administrative control of the petitioner company No.1 remained vested with the respondent no.1 and unfortunately, under the patronage of the respondent No.1, the petitioners' company No.1, engaged in Steel manufacturing business using its own Hydel Electricity, was subjected to heavy losses, especially, during 2010-2013, due to which assignment of scrap procurement was taken back from him in 2013. Petitioner averred that on 01.08.2018, the respondent No.1 returned to the management of the company after entering into an agreement dated 01.08.2018 under which he was assigned the task of Sales of petitioners's companies products "Billets" and procurement of scrap and other raw materials for the petitioners' companies subject to certain terms and conditions as applicable under Company law. Following the terms of the Agreement, the respondent No.1 was appointed as Director Sales and Procurement of the Company vide letter dated 06.08.2018; but unfortunately, following the terms of the agreement dated 01.08.2018 for a brief period, the respondent No.1 started committing criminal breach of trust by violating clauses No.1, 3,

4, 6, 7, 88, 11 and 14, for which he was requested time and again to operate under terms of the Agreement but regrettably, he paid no heed to this. Petitioners alleged that respondent No.1 by illegally receiving and misusing companies' money of petitioners through his personal accounts has promoted his own business and hence, committed a criminal breach of trust and in addition to that the respondent No.1, in clear conflict of interest, raised his own separate company in the name of **MM Traders Pvt. Ltd.** to start and promote his personal scrap business by stealing and embezzling petitioners' companies money from its sales proceeds; and it also came into the knowledge that the respondent No.1 was involved in corrupt practices, ripping off the petitioners' companies and its sponsors by misappropriations and adding his cut on the actual purchase rates of scrap on daily basis, cheating and defrauding other partners and sponsors of the petitioners' companies. He vehemently contended that having noticed these illegalities, cheatings and fraudulent activities of the respondent No.1, he was issued a show cause notice on February 16, 2021 and when satisfactory reply of show cause notice was not submitted by respondent No.1, he was removed from the position of Director Sales and Procurement on Feb. 24, 2021, hence, these company petitions filed by the petitioners-Mansoor Ahmed Khan and others to cover his acts of malfeasance, dishonest and illegal activities and actions. Petitioners zealously contended that respondent No.1 misappropriated, misused and stole the petitioners' companies' money in the tune of an amount of Rs.164,843,448/-, which was illegally received in his personal

accounts for which he is liable to be proceeded under law by returning all misappropriated amounts. Petitioners averred that respondent No.1 has withdrawn advance money in the amount of Rs.127, 340, 192/- during the period from 10.01.2014 till 30.04.2024 by misusing his position and authority in petitioner companies which is liable to be recovered from him.

6. Written reply has been filed on behalf of respondent wherein the claim of the petitioner has been denied in toto and raised preliminary objections that petitioner is not entitled to file instant petition without valid board resolution. The respondent contended that instant petition has been filed by the petitioner No.3 mendaciously, just to delay the disposal of other two company petitions filed by respondent No.1.

7. Barrister Adnan Nawaz Khan, the learned counsel for the petitioner-Mansoor Ahmed Khan, reiterated the facts narrated in the petitions and contended that respondent No.2-Zulfiqar Abbasi, after incorporation of the respondent No.1 company/Kohsar Hydro, was operating the business to supply the electricity with capacity of 1.5 MW, however, the Board of Directors (BoD) of the respondent No.1 company decided in a meeting, to arrange the funds and enhance the capacity by adding 3.5 MW in its system, therefore, the respondent No.2 borrowed a loan amounting PKR 316, 000, 000/- from the First Woman Bank Ltd and Pak China Investment Corporation in the name of respondent No.1 company which was also spent for up gradation of the

sister company. Learned counsel vehemently contended that the documentation for importing the machinery from China was in process through TRIED (original), the respondent No.2 registered the TRIED Engineering (Pvt.) Ltd. dated 28.02.2015 with the Registrar of Companies in AJ&K by declaring a Chinese National Mr. Liu Xiaoying as Director of the Sham Entity and pretended to the Lender Banks that the Sham Entity is the associated company of Tianjin Research Institute of Electric Science Co. (TRIED) and some machinery/equipment will be assembled in Pakistan by this Sham Entity, and therefore, a fake LC for the amount of PKR 130,000,000/- was issued in favour of Sham Entity dated 24th September, 2014. The learned counsel vehemently contended that respondent No.2 borrowed loans in personal capacity from different individuals without consent and intimation to the petitioner and paid PKR 40,857,721/- to (i) Dr. Saqib, (ii) Mr. Kabir Sabir, (iii) Faheem Ahmed Khan and other unknown parties, however, he has declared all such amounts as expenditure for expansion of the respondent No.1 company which are again fake entries. Counsel for the petitioners vehemently contended that notwithstanding the fact that the petitioner owns 25% shares in the respondent No.1 company, the respondent No.2 as CEO of the respondent No.1 company is not paying the declared dividend to the petitioner in the manner and within the period specified under Sections 242 & 243 of the Companies Act, 2017. Counsel for the petitioner staunchly contended that respondent No.2 in violation of the Articles of Association of the respondent No.1 company has also illegally transferred shares of respondent No.1 company to his

personal company and record of fraudulent transfer of shares has deliberately been concealed by respondent No.2 from the petitioner. Learned counsel maintained that respondent No.2 being CEO of the respondent No.1 company has completely isolated the petitioner from all the business affairs of respondent No.1 company for his personal benefits and in order to protect his fraud and embezzlements. The learned counsel pointed out that although the fact is that the petitioner owns 25% shares in the respondent no.1 company, respondent no.2 as CEO of the respondent No.1 company is not paying the declared dividend to the petitioner in the manner and within the period specified under Sections 242 & 243 of the Companies Act, 2017. Learned counsel vigorously contended that respondent No.2 also borrowed an amount of PKR, 140,000,000/- from Askari Bank Limited in November 2016 and an amount of PKR 100,000,000/- from Bank of Punjab in February 2017 for working capital and earned the profit of PKR 83,760,592/- during 2013 to 2017 and PKR 64,118,792/- during July 2018 to May 2021, therefore, the total amount which should have been in the accounts of the respondent No.1 company till May 2021 is PKR 387, 879,384/-. Finally, the learned counsel prayed for acceptance of both petitions and referred to and relied upon the following case law:-

i.e. 2011 CLD 1485.

8. While controverting the arguments of the learned counsel for the petitioner in writ petition No.01/2023 and 02/2023, Barrister Humayun Nawaz Khan, Advocate for respondents Mangla Metals and

Kohsar Hydro Pvt. Ltd, vehemently contended that both the petitions filed by petitioner Mansoor Ahmed Khan are liable to be dismissed due to concealment of facts, material non-disclosure of pending litigation and serious misstatement of facts. The learned counsel staunchly contended that the fact of pendency of writ petition No.4432/2021 and 4433/2021 was not disclosed while filing the titled company petitions, therefore, the company petitions are liable to be dismissed on strength of judgment of Supreme Court reported as 2017 SCR 1231. He vehemently contended that petitioner Mansoor Ahmed Khan in his petition No.02/2023 stated in ground A(ii) that M/S Tried Engineering was registered on 28.02.2015 while LC was opened in 2013 before its incorporation which is a serious misstatement and totally against the record, while in written reply Zulfiqar Ahmed Abbasi-respondent annexed a certificate of incorporation of M/S Tried Engineering at page 39 which clearly shows that M/S Tried Engineering was registered on 17.12.2013. The learned counsel zealously contended that a forgery was committed by Mansoor Ahmed Khan before the Court as in his company petition No.2/2023 while annexing an audit report of year 2018 at page No.158 & 159 he deliberately removed his signatures from bottom of the said report in order to suppress the fact and the same is reflecting from the original audit report of 2018, whereas copy of the same is annexed with replication of company petition No.02/2024 at page No.27 where Mansoor Ahmed Khan clearly signed that audit report as Director, hence, this is an offence under section 468 of APC i.e. forgery for purpose of cheating and punishment for the said offence

is 7 years of imprisonment, thus, a criminal proceedings may be initiated against the petitioner-Mansoor Ahmed Khan. The learned counsel contended that the allegation levelled by the petitioner against M/S Tried Engineering Pvt. Ltd. is without any substance, having no sanctity in the eye of law, hence, liable to be turned down. The learned counsel forcefully contended that all the funds including 130 million LC had already been audited by the duly approved auditors which have been signed and verified by Mansoor himself as being CEO (2007-2015) and being Director (2011-2018) and even he never raised any objection whatsoever till 2021 only when he was served with a notice dated February, 2022, for explanation of his illegalities and frauds. The learned counsel pointed out that issue of 130 million of local LC was never raised by Mansoor which categorically proves that this was not an issue at all and same is only an afterthought by Mansoor to hide his corruption, moreover, the allegation regarding Tehseen being front man of Zulfiqar Abbasi is negated under clause 11 of agreement dated 01.08.2018, whereby Mansoor petitioner himself acknowledged his service and he was made part of Mansoor's team in 2018 till Mansoor's ouster in 2021 who replaced Mansoor as Director Sales & Procurement (another grudge of Mansoor against Tehseen) and in 2013/2014 Tehseen was not even an employee of Mangla Metals Pvt. or Kohsar Hydro Pvt. Ltd. The learned counsel maintained that all the allegations levelled against the companies of the respondent-Zulfiqar Ahmed Abbasi are fake, fictitious, without any solid evidence, mere on the basis of presumptions, hence, cannot be considered at all.

Barrister Humayun Nawaz Khan in petition No.01/2024 M/S Mangla Metals etc. contended that Kohsar Hydropower Pvt. Ltd. & Mangla Metals Pvt. Ltd. were founded in 1999/2000 by Zulfiqar Abbasi and he appointed his unemployed younger brother Mansoor Ahmed Khan as a scrap supplier in 2003 and made him CEO of Mangla Metals Pvt. Ltd. (MMPL) in year 2007 without his share. The learned counsel pointed out that to investigate the lis/instant matter, an alternate remedy under Section 256 of Companies Act, 2017 is available, where such like affairs of company can be investigated thoroughly before a Commission or as per direction of the Commission. The learned counsel finally prayed that company petitions filed by the petitioner Mansoor Ahmed Khan may be dismissed with cost while the cross petition No.01/2024 filed on behalf of M/S Mangla Metals Pvt. Ltd and others may be accepted in the manner:-

- i. The respondent No.1 may kindly be convicted and sentenced under Sections 496(b) & (c) and 497 (1) & (2) by exercising powers under Section 477 read with 8th schedule of the Companies Act, 2017 as adapted in AJ&K through Companies (Adaptation) Act, 2021.
- ii. The respondent no.1 be ordered to return the misappropriated money in the tune of Rs.164, 843, 448/- & Rs. 127, 340, 192/- which has been withdrawn as advance by him during the period from 01.01.2014 till 30.04.2024 from the petitioner companies along with all other monies which are found to be misappropriated by respondent No.1 during trial of instant petition, by exercising the powers under section 287(b) & (c) of the Companies Act, 2017 as adapted in AJ&K through Companies (Adaptation) Act, 2021.
- iii. The respondent No.1 be barred to sell his shares and interest in the petitioner companies by exercising the powers under section 287 (c) of the Companies Act, 2017 as adapted in AJ&K through Companies (Adaptation) Act, 2021.

- iv. The respondents No.4-12 be directed to issue all bank statements of respondent No.1 MM Traders Pvt. Ltd, enabling the petitioners to trace their misappropriated monies by exercising the powers section 287 (c) of the Companies Act, 2017 as adapted in AJ&K through Companies (Adaptation) Act, 2021.
- v. The Commission be directed to remove the respondent No.1 from directorship upon his conviction under Section 172 and proceed against him under section 500 read with section 502 of the Companies Act, 2017 as adapted in AJ&K through Companies (Adaptation) Act., 2021.

In support of their assertions, the learned counsel placed reliance upon the following case laws:-

- i. 2014 CLD 1683.
- ii. 2015 CLD 970.
- iii. 2005 CLD 463.
- iv. 2016 CLD 970.
- v. 2021 CLD 7.
- vi. 2022 CLD 468.
- vii. PLD 1965 SC 221.
- viii. JCM 03/2016 relied by Mansoor – Para 3 – No audit was conducted- Not applicable in the instant case.

9. I have taken stock of the arguments advanced by the erudite counsel of parties besides brooded over the record as well as relevant law on the subject with due care.

10. Be that as it may, the complete mechanism has been provided in Companies Act, 2017 for investigation into affairs of company by the Commission constituted under the scheme of Companies Act. It is useful to reproduce the Sections, 256, 257 & 258 as under:-

“256. Investigation into affairs of company. --- (1) Where the Commission is of the opinion, that it is necessary to investigate into the affairs of a company---
(a) on the application of the members holding not less than one tenth of the total voting power in a company having share capital;

(b) on the application of not less than one tenth of the total members of a company not having share capital;

(c) on the receipt of a report under sub-section (5) of section 221 or on the report by the registrar under sub-section (6) of section 254;

it may order an investigation into the affairs of the company and appoint one or more persons as Inspectors to investigate into the affairs of the company and to report thereon in such manner as the Commission may direct:

Provided that before making an order of investigation, the Commission shall give the company an opportunity of being heard.

(2) While appointing an inspector under sub-section (1), the Commission may define the scope of the investigation, the period to which it is to extend or any other matter connected or incidental to the investigation.

(3) An application by members of a company under clause (a) or (b) of sub-section (1) shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring the investigation.

(4) The Commission may, before appointing an inspector, require the applicants to give such security for payment of the costs of the investigation as the Commission may specify.

257. Investigation of company's affairs in other cases. ---

(1) Without prejudice to its power under Section 256, the Commission ---

(a) shall appoint one or more competent persons as Inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct, if ---

(i) the company, by a special resolution, or

(ii) the Court ,by order,

Declares that the affairs of the company ought to be investigated; and

(b) may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct if in its opinion there are circumstances suggesting---

(i) that the business of a company is being or has been conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company

or towards any of its members or have been carrying on unauthorized business; or

(iii) that the affairs of the company have been so conducted or managed as to deprive the members thereof a reasonable return; or

(iv) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or

(v) that any shares of the company have been allotted for inadequate consideration, or

(vi) that the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or

(vii) that the financial position of the company is such as to endanger its solvency:

Provided that, before making an order under clause (b), the Commission shall give the company an opportunity of being heard.

(2) while appointing an Inspector under sub-section (1), the Commission may define the scope of the investigation, whether as respect the matters or the period to which it is to extend or otherwise.

258. Serious Fraud Investigation. ---(1) Notwithstanding anything contained in sections 256 and 257, the Commission may authorize any one or more of its officers or appoint such number of professionals from amongst the persons of ability, integrity and having experience in the fields of corporate affairs, accountancy, taxation, forensic audit, capital market, banking, information technology, law or such other fields as may be notified, as an Inspector or investigation officer to investigate such serious nature of offences relating to a company as provided in Sixth Schedule.

(2) the persons appointed as Inspectors or investigation officer under sub-section (1) shall have all powers of investigation officer under this Act, the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and Code of Criminal Procedure, 1898 (Act V of 1898), *mutatis mutandis* and shall report in such manner as the commission may direct.

(3) Where no procedure is provided in this Act or Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) the investigation officer shall comply with the relevant provisions of Code of Criminal Procedure, 1898 (Act V of 1898).

(4) Notwithstanding anything contained in this Act or any other law, the Commission may, if is satisfied that the matter is of public importance or it is in the interest of public at large, request the concerned Minister-in-Charge of the Federal Government to form a Joint Investigation

Team to be headed by a senior level officer of the Commission, not below the rank of Additional Director, and may include any person mentioned in sub section (1) alongwith Gazetted officer of any Federal law enforcement agency, bureau or authority for providing assistance in investigating the offence under this section and the direction of the concerned Minister-in-Charge of the Federal Government under this section shall be binding and any person who fails to comply with such directions, shall be guilty of an offence punishable with simple imprisonment of thirty days or fine up to one hundred thousand rupees by the Court:

Provided that nothing in this section shall be in derogation to or affect any proceedings under powers of the Commission to send reference under section 41B of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997)

(5) Upon completion of investigation, the Joint Investigation Team shall, through the Special Public Prosecutor, submit a report before the Court as mentioned in section 483 of the Act:

Provided that notwithstanding anything contained in the Qanun-e-Shahadat (Order), 1984 (P.O. No.X of 1984) or any other law, such report shall be admissible as an evidence in the Court.

(6) While trying any offence under this Act, the Court may also try any other offence, in which an accused may be charged under any other law, at the same trial if the offence is connected with such other offence.

(7) Where, in the course of any trial under this act, it is found that the accused person has committed any other offence in addition to any offences connected with the schedule offence, the Court may convict an accused for such other offence and pass any sentence under this Act or any other law:

Provided that where such offence is tried by any special court having jurisdiction, higher or equal to the Court of Session, joint trial will be conducted by such special court of all the offences and convict an accused accordingly under the process provided in the special law.”

11. Simultaneously under Section 258 in case of serious alleged fraud can also be investigated by the Commission and in such eventuality the said Commission has been equipped with the powers

available under Code of Criminal Procedure,1898, and the Securities and Exchange Commission of Pakistan Act, 1997.

12. Main plank of the arguments of the learned counsel appearing on behalf of the Petitioner-Mansoor Ahmed Khan is that the respondents have miserably failed to ensure the early audit of the Company in transparent and legal manner and instead of doing that he posed the audit of the company in arbitrary fashion which is not recognized by Articles of Association or for that matter Companies Act, 2017. Furthermore, in continuation of that Mr. Adnan Nawaz has also portrayed that after 2020, the Company even has failed to get audited its business in accordance with law.

13. While on the other hand, respondents represented by Barrister Humayun Nawaz Khan has staunchly contended that no illegality or violation of rules has been committed by them while pertaining to audit of company. As per his stance they have audited the affairs of the company from its inception and audit of the company has been completed up to year 2024. He contended that petitioner Mansoor Ahmed Khan, is also the signatory of the said audit reports, therefore, he is estopped to impugn the audit, made by the consent of the petitioner Mansoor Ahmed Khan.

14. As overall crux of the supra petitions is that both are leveling allegations of fraud and embezzlement against each other. Instant petitions have been filed by invoking jurisdiction of this Court/Company Bench of High Court under **Section 286 of Companies**

Act, 2017. Bulk of documentary evidence produced from both sides requires deep deliberation and investigation and vast powers have been given to the Commission under Sections 256, 257 and 258 to investigate and inquire into the such allegations of fraud, thus, at this juncture I am of the opinion that matter at hand first should have been agitated before the relevant Commission by way of preferring an application under Section 256 and as the Commission is fully equipped with all powers qua fixing criminal as well as civil liability and investigation of all disputed questions of facts by either way; it would be ideal adjudication of the matter if same is to be left upon for the lower fora to expose its wisdom upon the matter, efficacious modus operandi has been provided in Companies Act, 2017 for investigation of such like matter by the Commission. Let the matter be decided by the Commission in view of Sections 256, 257 and 258 of Companies Act, 2017. I am not inclined to investigate and dig out the matter at this fora qua resolution of fraud and malpractices as an alternate remedy is also provided by the Statute for investigation of such matter that too in absence of cogent proof. Where a right or liability is created by a Statute which gives a special remedy for enforcing it, the remedy provided by that Statute must be availed of¹.

15. As revealed from Section 286 2(B) of the Companies Act 2017, that if Court comes to the conclusion that to wind up the company will unfairly prejudice the members or creditors, the Court

¹. Imtiaz Ahmed vs. Ghulam Ali [PLD 1963 SC 382]; Novile v. London Express Newspaper Ltd. [(1919) AC 368] and Woolverhampton New Water Works Co. v. Hawkesford [(1859) 6 CB(NS) 336].

may with a view to bringing to an end the matters complained of, make such order as it thinks fit.

16. Be that as it may, both the petitioners (rival complainants) are real brothers as well, thus bone of contention by this angle is duplex. Record reveals that Audit mechanism was same as carried out in previous years, that too, by consent of both the rival petitioners, in this vista of the matter, without proper investigation and detailed probe; I am unable to ascertain and adjudge whether there is any element which can lead the matter that 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 in it in its memorandum etc.

17. Under Part VIII of the Companies Act, an efficacious alternate mode of resolution of conflicts is provided qua mediation, arbitration and reconciliation. It is the duty of the Courts to promote ADR by way of developing the confidence of the parties to adopt ADR without lengthy litigation before the Court, which practice would definitely strengthen the ecosystem of ADR. The Courts and the ADR have symbiotic relationship with critical independence.²

18. In this era, alternate dispute resolution is encouraged and promoted in order to take refuge from prolonged litigation and to find our amicable settlement of the conflicts. Prolonged litigations swallow up the generations and most of the litigants cannot get the fruit of

². Waqas Yaqub v. Adeel Yaqub [2024 CLD 990].

litigation in their life time and inherit the litigation to next generation coupled with the differences to carry in their life.

(Underlining is mine)

19. Petitioner has not opted to resolve his dispute by way of referring the matter to mediators under Section 277 nor they referred the matter for arbitration in view of Section 278 which could be a proper recourse as well, prior to raising the controversy before this fora without any solid evidences indulgence is not justified. There is a marked difference between irregularities and fraudulent and oppressive manner.

20. Hon'ble Mr. Justice Jawad Hassan Judge Lahore High Court in the case titled "Nadeem Kiani vs. Messrs American Lycetuff (Pvt) limited & others **2021 CLD 7**, amicably tabulated the jurisprudence of commercial law developed by the superior courts of Pakistan on the requirement of Section 286 of the Act, before passing any order by a Company Judge.

21. It was held in the supra judgment as infra:

“To make an order under Section 286 of the Act, Court has to satisfy that the Company's affairs are being conducted in a manner warranting exercise of jurisdiction and winding up order would unfairly prejudice the members or creditors.

Mere allegation of certain irregularities committed by a company do not provide sufficient grounds or give rise to the justification of exercising powers vested under the law in this regard.”

22. It is candidly oozing from section 286 of the Companies Act that Court can take cognizance of the matter only when it is satisfied that affairs of Company are being conducted or are likely to be conducted in an unlawful manner, or for that matter fraudulent manner or a manner oppressive to any of the members.

23. Both the petitioners have failed to make out their case by this angle which can attract the conscious of this Court qua exercise of jurisdiction under Section 286 of Companies Act, 2017. My this view receives support from the following case laws:

- (i) M. Imran Qureshi vs. Mohammad Asif 2020 CLC 1060 Sindh.
- (ii) Malik Aziz ul Haq vs. Messrs Crystal Line Chemical Industries 2016 CLD 970.
- (iii) M Ijaz vs. Federation of Pakistan 2014 CLD 1683.
- (iv) Muhammad Fikree vs. Fikree Development Corporation 1992 MLD 668.

24. To resume the thread of events, it is worthwhile to mention that on one hand the petitioner Mansoor Ahmed Khan is questioning the mode of Audit of the Company while on other hand it depicts from record that he himself remained instrumental in the audit affairs, in this way he is signatory of the audit reports/documents, which ex-facie amounts to approbate and reprobate.³

25. Sufficient record, material is not available in light of which the Court could record finding qua matters indicated in the Section 286 of the Act.

³. Approbate and reprobate is a Latin maxim that means “to approve and to disapprove”. It refers to the doctrine of election, which states that a person cannot accept or reject the same thing at the same time. Reliance is placed on Messrs Naeem Zafar Industries v. Bank of Punjab [2017 CLD 397].

26. Be that as it may at this juncture, we are only concerned with the question whether the petitioners are entitled to any relief by this Court with the bundle of matrix of facts raised first time before this Court without optioning for reconciliation, arbitration or moving to the Commission. Every irregularity *per se* cannot be regarded oppressive and irregularity does not bear upon its oppressiveness.

27. The true position is that an isolated act which is contrary to law may not necessarily and by itself support the inference that the law was violated with a malafide intention or that such violation was burdensome, harsh and wrongful but a series of illegal acts following upon one and other, 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 those acts are directed.⁴

28. **Factum of oppressiveness on part of one shareholder or major shareholders particularly where the major shareholders are practically at the helm of affairs cannot be resolved by this Court merely on insufficient documentary evidence, that too when an alternate fora for investigation and detailed inquiry is provided by the statute coupled with option of arbitration.**

29. Pragmatic construction of Section 286 is that an unwise, inefficient or careless conduct and irregular practices in running the affairs of Company on part of a shareholder (at the helm of affairs)

⁴. Needle Industires vs. NIN Ltd. AIR 1981 SC 1298

cannot give rise to a claim for relief under the section unless a case is not coming under the ambit of Section 286 in its letter and spirit.

(Emphasizes supplied)

30. In paralance of the prayed relief, I have to focus upon the four corners of Section 286 and to decide as to whether the petitions at hand qualify on the yardstick of grounds enumerated the supra mentioned section, finding on these grounds cannot be given in vacuum without sufficient material, mere alleging and inserting in pleadings qua factum that affairs of the Company are being run in an unlawful or fraudulent manner is not sufficient.

31. All the supra petitions are premature, although it is not a condition precedent to move the Commission prior to filing Company petitions before this Bench. But since an alternate fora is provided by law then it is desirable to get wisdom of the same upon the disputed questions of facts requiring detailed investigation as per law. All the titled petitions are **pre-mature**, hence, **dismissed**. However, the petitioners are at liberty to prefer their applications pertaining to the instant matter before relevant Commission for redressal of their grievance and relevant Commission is under legal obligation to take up their applications and investigate and decide the matter in accordance with law, expeditiously. File shall be kept in archive.

Muzaffarabad.
26.11.2024.^(A/T)

JUDGE /CHAIRMAN

APPROVED FOR REPORTING

JUDGE /CHAIRMAN