

Stereo.HCJDA 38.  
**Judgment Sheet**  
**IN THE LAHORE HIGH COURT,  
BAHAWALPUR BENCH, BAHAWALPUR  
JUDICIAL DEPARTMENT**

....

**Writ Petition No.8594 of 2016/BWP.**

Mst. Haleema, etc.

**Versus**

Executive Director, C & C Department  
Securities & Exchange Commission, etc.

**JUDGMENT.**

Date of hearing: **28.02.2024.**

Petitioners by: Mr. Aejaaz Ahmad Ansari, Advocate.  
Respondents by: M. Yaseen Kamran, Advocate.  
Ch. Muhammad Jameel, Assistant  
Attorney General for Pakistan.

**AHMAD NADEEM ARSHAD, J.** Through this Constitution Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, petitioners have assailed the vires of order dated 30.08.2016 passed by respondent No.1 whereby while exercising the power under Section 265 of the Companies Ordinance, 1984, a Chartered Accountant was appointed as Inspector for carrying out investigation into the affairs of the Company and to give findings and prayed as under:

*“It is therefore respectfully prayed that this Hon’ble Court may graciously be pleased to make an order:*

- a. *Declaring that the order dated 30.08.2016 (Annex-A) passed by respondent No.1 accepting the application of the respondent No.2 is without lawful authority and of no legal effect; and*
- b. *Granting such other or further relief to the petitioners as this Hon’ble Court may deem fit.*

2. The relevant facts necessary for the disposal of this petition are that Sardar Ghazanfar Ullah Khan predecessor of the parties

along with others formed a public limited company with the name and style of “*M/S ISAKHEL ESTATE FARMS LTD.*” Moza Basti Isakhel Estate, Tehsil & District Rahim Yar Khan registered under the Companies Act, 1913 and now functioning under the terms of Companies Ordinance, 1984 (*hereinafter referred to as the Ordinance, 1984*). Some disputes arose between the Shareholders and Directors, therefore, respondent No.2 filed a petition u/s 152 and 290 of the Ordinance, 1984, before this Court. Said petition was disposed of by this Court vide order dated 10.04.2015 through transmitting a copy of the petition along with all its annexures to the Security and Exchange Commission of Pakistan (SECP) with the direction to treat it as an application and decide the same strictly in accordance with law. The SECP/respondent No.1 after receiving the order of this Court issued show-cause notices to the Chief Executive and Directors of the Company under Section 265 of the Ordinance, 1984. After getting reply of the show-cause notices and providing opportunity of hearing, vide order dated 30.08.2016, appointed a Chartered Accountant as Inspector for carrying out investigation into the affairs of the Company as per terms of reference. Petitioners impugned said order through instant Constitutional Petition.

3. I have heard learned counsel for the parties at length and perused the record with their able assistance.

4. Main grievance of the petitioners is that impugned order is violative of the direction given by this Court through order dated 10.04.2015 while deciding C.O. No.01 of 1995 whereby the petition filed by respondent No.2 was transmitted to the respondent No.1 for decision of the same and no direction was given to pass any order in terms of Section 265 of the Ordinance, 1984. Learned counsel for the petitioners in this regard argued that at the most application of the petitioners should have been treated as an application filed by the private person under Section 263 of the Ordinance, 1984 and not under Section 265 of the Ordinance, 1984. He further clarified that jurisdiction under Section 265 of the Ordinance, 1984, can be exercised either on a resolution passed by the Company in General

Meeting or on an order of the Company Court or in specified serious cases of fraud etc. under discretionary *suo-motu* jurisdiction and as none of the conditions were available, therefore, the impugned order is not sustainable. He adds that this Court did not issue any direction to proceed under Section 265 of the Ordinance, 1984. Further maintains that application under Section 263 of the Ordinance, 1984 was also not maintainable as it requires Members holding not less than 1/10 of the total voting powers.

5. For better understanding Section 265 of the Ordinance, 1984 is reproduced as under:

**“265. Investigation of company’s affairs in other cases.- Without prejudice to its power under section 263, 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 resolution in general meeting, or*
- (ii) the Court, by order,*

*declares that the affairs of the company ought to be investigated by an inspector appointed by the Commission; 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 the opinion of the Commission there are circumstances suggesting—*

*(i) that the business of the 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 of a reasonable return; or*

- (iv) that the member 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 or 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 to show cause against the action proposed to be taken.”*

6. The Commission under Section 265 (a) of the Ordinance could appoint Inspector subject to fulfillment of pre-conditions mentioned therein but such pre-conditions are not applicable to its *suo-motu* powers under Section 265 (b) of the Ordinance, to appoint Inspector.

7. The Commission has only to satisfy itself, *prima-facie*, on the basis of the material placed before it, that case for investigation through an Inspector is called for. The matter, in fact, vests in the discretion of the Commission, to be decided after following the summary procedure. In proceedings under Section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded before passing the order under Section 265 of the Ordinance. The Authority has to only satisfy itself *prima-facie*, of course, on the basis of the material placed before it that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegation during the investigation to be conducted by him whereafter he has to submit report to the concerned Authority.

8. Respondent No.1 while passing the impugned order issued show-cause notices to the Chief Executive and Directors of “M/s Isakhel Estate Farms Ltd.” and after going through the facts of the

case, evidences produced by the parties, arguments advanced by the representatives observed as under:

*"In view of the foregoing observations, I am of the considered view that the affairs of the Company are as such which warrants deeper probe through appointment of a competent Inspector(s). Therefore, in exercise of the power conferred under Section 265 of the Ordinance, read with S.R.O 154(1)/2015 dated 19.02.2015, I hereby appoint Mr. Talib, FCA of M/s PKF F.R.A.N.T.S Chartered Accountants as Inspector for carrying out investigation into the affairs of the Company as per annexed terms of reference (TORs). The Inspector is directed to analyze the TORs, give his findings after meeting all the requirements of the law, which should be supported with material evidence relied upon by him. He is further directed that each and every reported violation should not be vague and bear reference to relevant provisions of law."*

9. Perusal of the record reflects that respondent No.2 while filing petition under Section 152 & 290 of the Ordinance, 1984 (C.O. No.1/1995) claimed that he holds shares of more than 20% of the total paid up capital of the Company and prayed as under:

*"Wherefore it is respectfully prayed that:*

- a. *That the register of members of the respondent No.1 be directed to be rectified so that the names of respondents No.2 to 11 are deleted;*
- b. *That the fresh allotment and transfer of shares to the respondent No.2 to 11 be declared to be ineffective and inoperative in law;*
- c. *That the fraudulent sale of the assets of the Company vide resolution dated 13.12.1993 and sale deeds dated 30.12.1993 and 03.01.1994 be held to be inoperative against the Company.*
- d. *That appropriate orders be passed for preserving the assets of the Company and its proper by its bona fide shareholders.*  
*Any other relief found fit and expedient in the circumstances of the case may also be passed."*

10. This petition was disposed of by this Court vide order dated 10.04.2015 in the following terms:

*“Learned counsel for the petitioner submits that he would be satisfied if the matter is referred to SECP to investigate the alienations in terms of Section 265 of the Companies Ordinance, 2004 (inadvertently written as 2004 instead of 1984) into the allegations levelled by the petitioner and thereafter decide the case in accordance with law under intimation to the Deputy Registrar (Judicial) of this Court.*

2. *In view of the matter, a copy of this petition along with all its annexures is transmitted to SECP with the direction to treat it as an application filed by the petitioner and decide the same strictly in accordance with law under intimation to Deputy Registrar (Judicial) of this Court. Disposed of accordingly.” \*

*(Underline is mine)*

11. The expression used by this Court “*Disposed of accordingly*” has a significant meaning. It means that the petition was disposed of in terms of the submission made by the learned counsel for the petitioner as narrated in para-1 and direction given in para-2 of the order. This Court in a case titled “MUHAMMAD SAQLAIN V. THE STATE, ETC.” (2023 LHC 6699), observed as under:

*“So, in other words, the order “learned counsel for the petitioner wishes to withdraw this petition after arguments. Disposed of accordingly” means that subject petition terminated, settled, ended, concluded or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case.”*

12. It can safely be concluded that this Court while transmitting the petition along with its annexures directed the SECP to decide the same in accordance with law i.e. in terms of Section 265 of the Ordinance, 1984.

13. In the light of observations made hereinabove, respondent No.1 has rightly passed the impugned order by appointing the Chartered Accountant as Inspector in terms of Section 265 of the Ordinance, 1984. The contention raised by the learned counsel for the petitioners has no force. He failed to point out any illegality,

irregularity or jurisdictional defect on the part of respondent No.1 while passing the impugned order.

14. Epitome of above discussion is that this writ petition having no merits is hereby **dismissed**.

**(AHMAD NADEEM ARSHAD)**  
**JUDGE.**

***APPROVED FOR REPORTING.***

**JUDGE.**

*M. Arsalan\**