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JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Civil Original No.06 of 2022

Faisal Zafar and another **V/S** *Siraj-ud-Din and 4 others,
GENOME Pharmaceuticals and
SECP*

JUDGMENT

Date of hearing	10.10.2023
Petitioner(s) by	M/s. Ahmer Bilal Soofi, Sr.ASC, Samar Masood, Usman Jilani, Barrister Zainab Nasir Khan, Fatima Midrar and Barrister Aiema Asrar Advocates.
Respondent(s) by	Mr. Nadeem Ahmad Sheikh, ASC for the Respondents No.1 to 3. Barrister Osama Amin Qazi, Advocate for Respondent No.4. Mr. Muzaffar Ahmad Mirza, Chief Prosecutor/ Executive Director, Legal Affairs, SECP alongwith Fatima Shabbir, Advocate for SECP alongwith Barrister Zunaira Fayyaz. Malik Saqib Mehmood Khalid, Qurraish Mughal and Malik Shaukat Mahmood, Advocates.

The most desirable object in all judicial determinations, especially in mercantile ones (which ought to be determined upon natural justice, and not upon the niceties of the law) is to do justice.¹

Lord Mansfield Chief Justice of the King's Bench UK

JAWAD HASSAN, J. In this case, the Court will discuss in detail the “*Doctrine of Expedited Resolution of Corporate Disputes through Mediation*” between the Parties regarding the Genome

¹ “*Should the Law be Certain?, The Oxford Shreival lecture given in the University Church of St Mary The Virgin, Oxford on 11th October 2011 delivered by Lord Mance, Judge UK Supreme Court*”.

Pharmaceuticals (the “**Company**”), in connection whereto, this Court will seek guidance from the Preamble as well as Sections 6, 276 and 277 of the Companies Act, 2017 (the “**Act**”). For meaningful and object-oriented conclusion, this Court will also discuss the legal doorways for the purpose of resolution of corporate disputes through intervention of the Court as to how a company petition filed under Part IX Section 286 and 287 of the “**Act**” can be converted into proceedings under Section 276 and 277 envisaged in Part III of the “**Act**” dealing with mediation, arbitration, arrangements and reconstruction.

2. The Petitioners have filed this petition under Sections 286 and 287 alongwith all enabling provisions of the “**Act**” alleging the mismanagement by Respondents No.1 to 3 (Siraj-ud-Din, Hazrat Ullah and Abu Zar Faizy Rattu) in the affairs of the Respondent No.4/ the “**Company**”, with the following prayer:

“In light of the submissions made above, and, also given the circumstances that the company cannot remain a growing/ running concern because of the obstinate behavior of Group-B, it is most humbly prayed that the instant petition be accepted and direction be passed by this Honorable Court for:

(a) Purchase of shares held by the Respondents No.1, 2 and 3 by the Petitioners or purchase of shares held by the Petitioners by the Respondents at offered price; rate being same for both in either instance and under the same terms and conditions.

(b) Setting aside of agreement under the consent decree and the reconstitution of board on the basis of fresh elections according to the Companies Act, 2017 under the direct supervision of either the Honorable Court or SECP.

(c) The operations of the Company may be run by the Petitioners.

Any other relief deemed just and appropriate may also be granted in favour of the Petitioners.”

I. CONTEXT

3. Factual history of the case is that the Respondents No.1 and 2 (Siraj-ud-Din and Hazrat Ullah) filed two Civil Originals. First Civil Original No.03 of 2021 was filed on 05.10.2021 under Section 126 of the “*Act*” for rectification of the registers of the “*Company*” while second Civil Original No.04 of 2021 under Sections 286 and 287 and other enabling provisions of the “*Act*” was filed for appropriate orders with regard to the affairs of the “*Company*”. Eventually, proceedings were carried out by the Court in Civil Original No.04 of 2021 and in terms of order dated 27.01.2022, the counsel for the parties were directed to arrange meeting of the parties and other concerned for the resolution of issue amicably and for protection of interest of the “*Company*”, by adopting the process of Early Neutral-Party Evaluation (the “*ENE*”) and the parameters settled by this Court in “SAUDI PAK INDUSTRIAL & AGRICULTURAL INVESTMENT COMPANY LTD versus CHENAB LIMITED” (2020 CLD 339) and “THE ADDITIONAL REGISTRAR COMPANY versus AL-QAIM SUGAR MILLS LTD.” (2021 CLD 931). On the next date of hearing i.e. 31.01.2022, following order was passed:

*“Pursuant to the order dated 27.01.2022, learned counsel for the Petitioner has placed on record the minutes of meetings dated 27.01.2022. The same is taken on record as Mark-A, paragraph No.6 of which shows that after thorough and exhaustive discussion, parties were able to reach a conclusion for the purpose of normalizing operations of the Respondent No.1/Genome Pharmaceutical Pvt. Ltd. (the “*Company*”) and they made certain unanimous proposals for its revival.*

2. *Mr. Nadeem Ahmad Sheikh, ASC submits that they could not decide the name of Chief Executive Officer (CEO) from the Directors. However, he submits that the Petitioners are agreed for appointment of a “Professional CEO” with mutual understanding after taking joint interview by the Directors. He adds that till the appointment of Professional CEO, wife of the Respondent No.3/Mr. Faisal Zafar may act as CEO of the Company. He also prayed for third party audit of*

the Company for the period of last five years. He also proposed three names for audit i.e. (i) Mr. Waqar Sharif of AHW & Co, (ii) Laeeq Rana of Ishtiaq Rana & Co. and (iii) Ali Rafique of Riaz Ahmad Saqib Gohar & Co. Mr. Faisal Zafar is agreed to aforesaid proposals.

3. *In view of above, in order to avoid any further dispute, it is directed that both the Parties shall appoint Professional C.E.O. of the company by advertising the said post in the newspapers within a period of three (03) months. However, in the meanwhile, as agreed between the Parties, as an interim arrangement, Mrs. Tehseen Zia wife of Faisal Zafar shall act as C.E.O. of the Company to run and manage its affairs. Furthermore M/s. Laeeq Rana of Ishtiaq Rana & Co. is hereby appointed as an Auditor to audit the Company's accounts for the last five years.*

4. *So far as the issue regarding their shareholdings both the parties seek some further time for its solution. Let them do so.*

5. *This Court in the case reported as "Additional Registrar Companies v. Al-Qaim Textile Mills Ltd." (2021 CLD 931) has already declared the "Securities and Exchange Commission of Pakistan" (the "SECP") as Regulator of entire companies, therefore, the SECP shall look into the matter and assist the management of the Company for its revival procedure. In the meanwhile, the Drug Regulatory Authority of Pakistan (the "DRAP") shall not interfere with the affairs of the Company, which was plead by the Respondents.*

6. *Now to come up for further proceedings on 08.02.2022. Learned counsel for the Petitioner shall submit a joint report alongwith way forward on or before the said date."*

4. Thereafter on 08.02.2022, Civil Original No.04 of 2021 was *disposed of* with certain directions on the basis of settlement arrived at between the parties in the following manner:

"Pursuant to the order dated 31.01.2022, learned counsel for the Petitioner has placed on record a supplemental proposal to run the affairs of the Respondent No.1/Genome Pharmaceutical Pvt. Ltd. (the "Company"). The same is taken on record as Mark-B. The last paragraph is re-produced as under:

"All the directors mutually agreed to extend their support and full assistance towards the company's

prosperity and betterment. Every director ensured to take all necessary actions required to create a friendly and congenial environment in the company. They also agreed to help revamp the operations by serving the company to the best of their knowledge. Any issue arises shall be dealt with mutual discussion. It was also agreed that after receiving court order, all necessary steps shall be taken immediately and all directors shall play their role to make the company operational within shortest possible time.”

2. *Barrister Osama Amin Qazi, Advocate for the Respondent No.1/Company submits that the affairs of the Company/Factory will hopefully be functional within next three days. However, submits that the SECP be directed to update their record/Form(s) in the light of their amicable settlement.*

3. *Mr. Adeel Peter, Advocate for SECP has submitted that they will do the needful if the Company approaches for up-dation of its record.*

4. *Mr. Nadeem Ahmad Sheikh, ASC submits that as the Parties have reached to the consensus regarding revival of the Company as per the submitted proposals i.e. Mark-A and B, therefore, this petition be disposed of being fructified.*

5. *In view of above, the SECP shall update the record of the Company in accordance with law. However, as recorded in the order dated 31.01.2022, the Drug Regulatory Authority of Pakistan (the “DRAP”) shall not interfere with the affairs of the Company. Learned Law Officer shall inform this order in writing to the DRAP to act in accordance with law.*

6. *In view of above, this Petition stands disposed of being fructified.”*

5. During the pendency of Civil Original No.03 of 2021, the Petitioners filed the captioned Civil Original (C.O.No.06 of 2022) on 07.09.2022 and further proceedings were carried out thereon. For the purpose of expeditious resolution of corporate disputes through mediation between the parties regarding the “Company”, certain orders have been passed, which have become fruitful and now today the Respondents No.1 and 2 have withdrawn Civil Original No.03 of 2021.

6. Pursuant to order dated 19.09.2023, notices were issued to the Respondents, who filed their reports/replies. In order to make the “*Company*” running concern and for the purpose of resolution of corporate disputes through intervention of the Court, before any determination, this Court suggested the “*ENE*” through mediation in terms of Section 6 of the “*Act*” and pursuant thereto the parties started negotiation.

II. PETITIONERS SUBMISSIONS

7. Learned counsel for the Petitioners Mr. Ahmer Bilal Soofi, Sr.ASC *inter alia* submitted that the Petitioners are members of the “*Company*”, and are competent to file this petition being holder of 52.5 percent of shares collectively; that affairs of the “*Company*” are being conducted by the Respondents No.1 to 3 in unlawful and fraudulent manners and that too against the Articles of Memorandum of Association of the “*Company*”; that on similar issue, earlier the matter was agitated in Civil Original No.04 of 2021 which was amicably solved on the directions of this Court to settle the matter under the provisions of the “*Act*” and adopting the process of the “*ENE*”; that vide order dated 31.01.2022, under the course of the “*ENE*”, the Court directed the parties to appoint professional C.E.O. of the “*Company*” and besides this, direction was also issued to the Securities and Exchange Commission of Pakistan (*the “SECP”*) to look into the matter and assist the management of the “*Company*” for its revival procedure as prime object of the Court as well as the parties was the smooth functioning of the “*Company*” for the purpose of employment, revenue, duties/taxes and the export. Thereafter, on 08.02.2022, the said petition was disposed of being fructified due to a consensus arrived at between the parties about revival of the “*Company*”; that as per Section 6(11) of the “*Act*” every petition presented to a Company Judge is to be decided within **one hundred and twenty days** from the date of its presentation while under the provisions of Sub-Section (7) of this Section, the Company Judge can

fix a date and allocate time for hearing of the case. Mr. Usman Jilani, Advocate has referred to the judgment passed by this Court in the case of Lt. General (Retd.) Mahmud Ahmad Akhtar and another versus M/s Allied Developers (Private) Limited and others (2022 CLD 718) (**Rawalpindi Bench**), in which the course/process of the “ENE” has been developed first time by this Court; that the Company is functioning, but Respondents No.1 o 3 have committed certain illegalities in running its affairs/management as mentioned in this petition and also supported by the evidence annexed with this petition, including (i) non-compliance of order dated 08.02.2022 (passed in C.O.No.04/2021); (ii) non-payment of salary to the employees; (iii) non-payment of electricity bills; (iv) negatively affecting the morale of the workers and causing resentment; (v) hindering in day to day operations; (vi) non-compliance with the SECP corporate guidelines; (vii) effect on export operations of the Company; and (viii) impracticality of the agreement under the consent decree. Fatima Midrar, Advocate pleads that the aforesaid earlier petition was disposed of by this Court due to a consensus arrived at between the parties with certain commitments regarding revival of the Company, but Respondents No.1 to 3 have not adhered to in *stricto sensu*, hence, this Petition.

III. RESPONDENTS SUBMISSIONS

8. Initially, Mr. Muzaffar Ahmad Mirza, Chief Prosecutor/Executive Director, Legal Affairs of the “SECP” objected qua maintainability of this petition, but during proceeding of this case, in order to resolve the controversy between the parties before any determination, this Court suggested an “ENE” in terms of Section 6 of the “Act”, which was accepted by the Respondents. Furthermore, Mr. Nadeem Ahmad Sheikh, ASC and Barrister Osama Amin Qazi, Advocate did not contest this petition however, preferred to settle the issue through mediation for smooth working of two separate companies.

9. Arguments heard. Record perused.

IV. LEGAL QUESTION

10. The above discussion gives rise to the following legal question:

Whether a corporate dispute under Sections 286 and 287 of the "Act" alleging the mismanagement of members of a company be resolved through mediation and compromise before passing any determination by the Court?

V. RESOLUTION OF CORPORATE DISPUTE

11. During proceedings of the case, on 12.10.2022, Mr. Ahmer Bilal Soofi, Sr.ASC proposed the appointment of a Chartered Accountant by this Court for better resolution of issue of deadlock between the parties holding fifty percent shares equally on the parameters set out by this Court in paragraph No.26 of the judgment cited as "NADEEM KIANI versus M/s AMERICAN LYCETUFF (PVT) LIMITED and others" (**2021 CLD 7**).

12. M/s Usman Jillani and Samar Masood, Advocates appeared on behalf of the Petitioner and highlighted that powers of the Courts to resolve litigation amongst parties have been time and again recognized and approved around the globe. They have referred to following cases:

(a) United States Court of Appeal, First Circuit, in re Atlantic Pipe Corp. (**304 F.3d 135 (1st Cir. 2002)**) decided on September 18, 2002, wherein it is held that "*Does a district court possess the authority to compel an unwilling party to participate in, and share the costs of, non-binding mediation conducted by a private mediator? We hold that a court may order mandatory mediation pursuant to an explicit statutory provision or local rule. We further hold that where, as here, no such authorizing medium exists, a court nonetheless may order mandatory mediation through the use of its inherent powers as*

long as the case is an appropriate one and the order contains adequate safeguards. ... Even apart from positive law, district courts have substantial inherent power to manage and control their calendars. ... this inherent power takes many forums ... By way of illustration, a district court may use its inherent power to compel represented clients to attend pretrial settlement conferences, even though such a practice is not specifically authorized in the Civil Rules. ... First, inherent powers must be used in a way reasonably suited to the enhancement of the court's processes, including the orderly and expeditious disposition of pending cases. ... Second inherent powers cannot be exercised in a manner that contradicts an applicable statute or rule. ... Third, the use of inherent powers must comport with procedural fairness. ... And, finally, inherent powers "must be exercised with restraint and discretion. ... Mindful of these potential advantages, we hold that it is within a district court's inherent power to order non-consensual mediation in those cases in which that step seems reasonably likely to serve the interest of justice ..."

- (b) The United States District Court, N.D. Illinois, Eastern Division observed *In re African-American Slave Descendants' Litigation MLD No.1491, Lead Case No.02 C 7764 (307 F. Supp. 2d 977 (N.D. Ill. 2004))* that "The Supreme Court has long held that "the inherent powers of federal courts are those which are necessary to exercise of all others. ... In this instance, the court does have the inherent power to order the parties to submit to non-binding mediation."
- (c) The Hong Kong Special Administrative Region Court of First Instance, *in re Personal Injuries Action No.707 of 2008*, wherein it is observed in Paragraph No.35 that "... Mediation is a voluntary process and a party is not forced to undergo

mediation, but unreasonable refusal to attempt mediation (especially when the other party has made the request) is relevant conduct in litigation in the exercise of the discretion on costs. ... It is better late than never, especially when time, expenses and uncertainty of the trial can be avoided.”

- (d) The Supreme Court of India in “**M/s. Afcons Infra Ltd. & Anr vs M/s. Cherian Varkey Constn** (2010 (8) SCC 24) (available at <https://indiankanoon.org/doc/1875345/>), wherein it is observed and held that “*All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special Tribunals/Forums) are normally suitable for ADR processes. ... If the parties are not agreeable for either arbitration or conciliation, both of which require consent of all parties, the court has to consider which of the other three ADR processes (Lok Adalat, Mediation and Judicial Settlement) which do not require the consent of parties for reference, is suitable and appropriate and refer the parties to such ADR process. ... The court has used its discretion in choosing the ADR process judiciously, keeping in view the nature of disputes, interests of parties and expedition in dispute resolution. ... The other four ADR processes are non-adjudicatory and the case does not go out of the stream of the court when a reference is made to such a non-adjudicatory ADR forum. The court retains its control and jurisdiction over the case, even when the matter is before the ADR forum. Where the reference is to a neutral third party ('mediation' as defined above) on a court reference, though it will be deemed to be reference to Lock Adalat, as court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal.*”

- (e) The Gujarat High Court, Ahmedabad, India, in case “**Pitamber B Ruchandani v. Arti Bharatbhai Ruchandani & 5** (O.J.APPEAL NO. 7 of 2014) (available at <https://indiankanoon.org/doc/15255037/>), wherein it is held that “*Be that as it may, while dismissing the appeal, we relegate parties first to go for Mediation at the High Court, Mediation Centre and if the mediation fails, then the parties may do needful as directed by the Company Law Board in Paragraph-13 which is extracted herein below:*

“13. *In view of the foregoing, the R-I Company is hereby required to keep the transfer of these shares in abeyance till the R-I Company is hereby required to keep the transfer of these shares in abeyance till the Company is able to produce the relevant records. ROC to keep the statutory statements in this regard as disputed. The Petitioners are at liberty to pursue their remedy before the appropriate forum regarding their allegation that the will is forged one.*”

VI. DETERMINATION

13. As discussed above, in order to resolve the controversy between the parties before any determination, this Court suggested an “ENE” through mediation in terms of Preamble and Sections 6, 276 and 277 of the “Act”. The Preamble elucidates that the “Act” has been enacted for the expeditious resolution of corporate disputes. The entire settlement was done by this Court by invoking the provisions of the “Act” in order to facilitate settlement between the parties and to avoid winding up which resulted into two separate companies, as mentioned in the settlement agreement. For ready reference, the Preamble of the “Act” is reproduced hereunder:

Preamble:

WHEREAS it is expedient to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic means in conduct of business and regulation thereof, regulating corporate entities for protecting interests of

shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interests in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith;

14. Significance of the Preamble of a statute for the purpose of interpretation of law has already been emphasized and highlighted by this Court in cases “Messrs Bahria Town (Pvt.) Ltd. through Manager (Operations) Vs. District Consumer Court, Rawalpindi and 2 others” (**PLD 2022 Lahore 488**), “Ch. Fayyaz Hussain Vs. Province of Punjab and others” (**PLD 2022 Lahore 1**), “The Additional Registrar Company Vs Al-Qaim Textile Mills Limited” (**2021 CLD 931**) and “Messrs Jet Green (Pvt.) Limited Vs. Federation of Pakistan and others” (**PLD 2021 Lahore 770**) more or so with substance that “*the preamble to a statute is though not an operational part of the enactment yet it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also shed clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, is therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.*” Moreover, it has been observed in case “Saif Ur Rehman Khan Vs. Securities and Exchange Commission of Pakistan (SECP) through Chairman and 2 others” (**2022 CLD 1460**) that “*The object of promulgating the Act of 2017 has been described in its preamble as to reform and re-enact the law relating to companies.*” Relying upon preamble of the Act, in case Lt. Gen. (Retd.) Mahmud Ahmad Akhtar and another Vs. Messrs Allied Developers (Pvt.) Ltd. through Chief Executive and 3 others (**2022 CLD 718**), this Court has already elaborated that “*The Preamble of the Act protects the interests of shareholders, creditors, other stakeholders and general public and provides an alternate mechanism for expeditious resolution of corporate*

disputes." It would further be quite relevant to mention here that in case "Tariq Iqbal Malik Vs. Messrs Multiplierz Group Pvt. Ltd. and 4 others" (**2022 CLD 468**), this court has already observed and held that "*The legislative intent of the Act is clear and obvious from its Preamble that it has been enacted to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic means for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interest in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith*". Furthermore, Sections 276 and 277 of the "Act" are reproduced hereunder:

Section 276. Mediation and Conciliation Panel:-

(1) Any of the parties to the proceedings may, by mutual consent, at any time during the proceedings before the Commission or the Appellate Bench, apply to the Commission or the Appellate Bench, as the case may be, in such form along-with such fees as may be specified, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Commission or the Appellate Bench, as the case may be, shall appoint one or more individuals from the panel referred to in sub-section (2).

(2) The Commission shall maintain a panel to be called as the Mediation and Conciliation Panel consisting of individuals having such qualifications as may be specified for mediation between the parties during the pendency of any proceedings before the Commission or the Appellate Bench under this Act.

(3) The fee and other terms and conditions of individuals of the Mediation and Conciliation Panel shall be such as may be specified.

(4) The Mediation and Conciliation Panel shall follow such procedure as and dispose of the matter referred to it within a period of ninety days from the date of such reference and forward its recommendations to the Commission or the Appellate Bench, as the case may be.

Section 277. Resolution of disputes through mediation:- A company, its management or its members or creditors may by written consent, directly refer a dispute, claim or controversy arising between them or between the members or directors inter-se, for resolution, to any individuals enlisted on the mediation and conciliation panel maintained by the Commission before taking recourse to formal dispute resolution.

15. It is to be noted that Section 276(2) of the Act requires the “SECP” to maintain a panel to be called “Mediation and Conciliation Panel” consisting of individuals having such qualifications as may be specified for mediation between the parties during the pendency of any proceedings before the “SECP” or the Appellate Bench. Section 276(1) of the Act authorizes the parties to the proceedings before the “SECP” or the Appellate Bench to apply, with mutual consent, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. In addition, under Section 277 of the Act, a company, its management or its members or creditors may by written consent, directly refer a dispute, claim or controversy arising between them or between the members or directors inter-se, for resolution, to any individual enlisted on the mediation and conciliation panel maintained by the “SECP” before taking recourse to formal dispute resolution.

16. It is important to mention here that there is no direct provision available in the “Act” regarding resolution of the corporate dispute through mediation between the parties, therefore, with the consent of the parties, this Court had referred the matter to the “SECP” to assume the jurisdiction and to expedite the matter in terms of Sections 280 and 282 of the “Act”, which provisions empower the “SECP” to enforce/sanction of a compromise or an arrangement in respect of a Company, because this Court in the case reported as “Additional Registrar Companies v. Al-Qaim Textile Mills Ltd.” (**2021 CLD 931**) has already declared the “SECP” as Regulator of entire companies. Thus, Mr. Muzaffar Ahmad Mirza, Chief Prosecutor/Executive

Director, Legal Affairs, SECP, was directed to support the parties for resolution of the matter. In said connection, for ready reference Sections 280 and 282 read as under:

Section 280. Power of Commission to enforce compromises and arrangements:- (1) Where the Commission makes an order under section 279 sanctioning a compromise or an arrangement in respect of a company, it may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Commission is satisfied that a compromise or arrangement sanctioned under section 279 cannot be worked satisfactorily with or without modification, it may, initiate proceedings for the winding up of the company.

Section 281. ...

Section 282. Powers of Commission to facilitate reconstruction or amalgamation of companies:- (1) Where an application is made to the Commission under section 279 to sanction a compromise or arrangement and it is shown that—

(a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies or division of a company into one or more companies;

(c) under the scheme the whole or any part of the undertaking or property or liabilities of any company concerned in the scheme ("a transferor company") is to be transferred to another company ("the transferee company") or is proposed to be divided among and transferred to two or more companies; and

17. The concept of corporate dispute resolution through mediation in the commercial matter and other alternate sources is not alien to system as it has already been held in case "Messrs U.I.G. (Pvt.) Limited through Director and 3 others Vs. Muhammad Imran Qureshi" (**2011 CLC 758**) that "the Court to bring an end to the controversy and for expeditious disposal of case by consent of the

*parties may adopt any alternate method of dispute resolution including mediation, conciliation or any other means". Furthermore, it has held in case "Messrs ALSTOM Power Generation through Ashfaq Ahmad Vs. Pakistan Water and Power Development Authority through Chairman and another" (**PLD 2007 Lahore 581**) that "The Courts are also expected to encourage the parties to adopt such modes in view of provisions of S.89-A and Order X, R.1(1-A) of the Code of Civil Procedure, 1908. It is now a universally accepted method being followed as a less expensive less time consuming, less cumbersome and ultimately a fruitful and beneficial mode, commonly known as ADR (Alternative Dispute Resolution)." Mediation' outcomes not only save time and money of parties, but it also reduces load of work in the courts as well as it is a most updated way on resolutions based on the " divine culture of Peace".*

18. It is settled by Supreme Court of Pakistan in a number of judgments holding it essential that mediation offers a voluntary and confidential alternative to traditional court proceedings for resolving disputes. In this process, disputing parties willingly engage in discussions facilitated by a neutral third party known as the mediator. Unlike court proceedings, mediation is a more informal and flexible approach, fostering open communication and creative problem-solving. The mediator's role is not to make decisions but to guide the parties in finding common ground and exploring potential solutions. One of the key advantages of mediation is its cost-effectiveness compared to court proceedings. It also tends to be a faster method of resolution, putting more control in the hands of the parties involved. The informality of mediation contributes to a quicker resolution compared to the often time-consuming nature of court proceedings. Additionally, the process preserves relationships, as parties actively engage in finding mutually agreeable solutions. The flexibility of

mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved.

19. Accordingly, as discussed above, a corporate dispute or petition under Sections 286 and 287 of the “Act” alleging the mismanagement of members of a company may be resolved through mediation and compromise before passing any determination by the Court with the consent of the parties involved in such dispute, since the law permits it.

20. So, keeping in light broader, wider and long-lasting prospects as well as fetching guideline from preamble alongwith Sections 6, 276 and 277 of the “*Act*”, mediation was set forth amongst parties supervised by the quarters of regulatory authority i.e. the “SECP”, which mediation has worked and met with desired fruits as well with mutual coordination and cooperation of learned counsel for the parties.

21. Pursuant to orders dated 19.09.2022, 12.10.2022, 24.10.2022, 15.12.2022, 16.05.2023, 20.06.2023, the parties have submitted Settlement Agreement executed between them on certain issues. On 12.09.2023, it was recorded that the Petitioners have handed over five original cheques i.e. cheque No.10084191 of Bank Al-Habib Limited amounting Rs.4,000,000/-, cheque No.01796532 of Bank Al-Falah Limited amounting Rs.7,000,000/, cheque No.D-19834813 of Meezan Bank Limited amounting Rs.74,000,000/-, cheque No.7025425985 of the Bank of Punjab amounting Rs.30,000,000/- and Cheque No.1870811714 of MCB Bank Limited amounting Rs.66,000,000/- to the Respondents, which were received by them. The details of aforesaid cheques are also mentioned in clause 11.1 of the above said agreement, photocopies whereof are placed with file. Case was then fixed for 19.09.2023 regarding remaining unresolved issue (if any). Learned counsel for the Respondents submitted that a new company under the name and style of Solaris Life Sciences (Private) Limited has been set up at Rawat and they want to apply for the change of

name of current company before the concerned quarter. On 19.09.2023, the above said agreement was placed on record by the office, which is marked as “Mark-A”. Office was directed to issue certified copy of the agreement to the parties in order to take further steps.

22. On the request of learned counsel for the Petitioners that the “SECP” should expedite the issue with regard to division of company and change of its name, Mr. Muzaffar Ahmad Mirza, Chief Prosecutor/Executive Director, Legal Affairs, SECP was directed to support the parties in this regard. On 04.10.2023, in order to move forward for the execution of the aforesaid agreement and resolution of the dispute, learned counsel for the Parties were directed to place on record a roadmap. Today, learned counsel for Parties submitted report regarding necessary steps for execution/implementation of agreement dated 12.09.2023 (Mark-A). The same is re-produced as under:

A) *Change in management of Genome Pharmaceuticals (Pvt) Ltd.*

That Pursuant to Clause 3 of the Agreement, Group B [(i) Mr. Siraj-ud-Din, (ii) Mr. Hazrat Ullah and (iii) Mr. AbuZahr Rattu] would resign from the position of Directors of Genome Pharmaceuticals (Pvt) Ltd. An updated Form 29 would be submitted before the SECP and same is to be updated pursuant and as consequent to the order of this Hon'ble Court.

(Prospective form 3 is attached.)

B) *Transfer of Assets and Liabilities*

That to put the agreement dated 12.9.2023 into practical operation, certain assets and liabilities mentioned below would be transferred in favour of Group B. Particular detail is as under:

(1) Group B shall take/control of Rawat Factory on as is where is basis including its land, building and all fixtures, plants, premises; through transmission of Rawat Factory to Solaris Life Sciences Private Limited as existing share of Group B in Genome Pharmaceuticals (Private) Limited.

(2) *The outstanding loan amount of PKR 10,000,000/- (Ten Million) payable to Genome Pharmaceuticals (Private) Limited by Hazarat Ullah, member of Group B , shall stand transmitted to Solaris Life Sciences (Private) Limited as an outstanding loan amount and would be adjusted to nill in account of Genome Pharmaceuticals (Private) Limited.*

That the said transfer of Assets and liabilities would be made by holding an extra ordinary general meeting of the company which could be scheduled at the earliest subject to the direction and order of this Honorable Court.

C) Reduction of Share Capital

That pursuant to the sanction of the agreement dated 12.9.2023, the share capital of Genome Pharmaceuticals (Pvt) Limited would be reduced with reduction of 3800,000 shares held by Group B. Section 286(2) mandates this Court to sanction such reduction, which would simultaneously be put in the agenda of the extra ordinary general meeting and would be convened to transact part B above.

Conclusion

Following the approval of the extra-ordinary general meeting, an undated form 3-A demonstrating reduction of the share capital would be filed before SECP for procedural purposes (Prospective Form 3-A is annexed).

The Board of Directors of Genome Pharmaceuticals (Pvt) Limited will take all necessary actions, including engaging legal counsel, to execute the transfer of shares and the reduction of share capital as described above (Draft of Board of Directors resolution is annexed).

23. In view of the judgments referred to in corporate matters regarding the mediation, the principles common in all of them are that the company law is to protect and look after the interest of shareholders and in this case, the parties have settled through the role of this Court because of linking section 6 read with Sections 276 and 277 of the “Act”, hence it is the duty of the company judge to protect the interest of the “Company” and minimize adverse effect to it. Based on the

strong principles to safeguard the interest of the “*Company*” and to resolve corporate dispute developed by Supreme Court of Pakistan in various judgments, this Court is of the view that Section 276 and 277 of the “*Act*” can be invoked in order to protect the interest of the “*Company*” and the Court can initiate process of the “*ENE*” and then mediation.

24. In view of above said compromise/concurrence of the parties, this petition stands disposed of. However, under the doctrine of continuous mandamus as observed in the judgment of this Court, “MALL ROAD TRADERS ASSOCIATION Versus The DEPUTY COMMISSIONER, LAHORE” (2019 CLC 744), the parties shall adhere to the aforesaid compromise deed (Mark-A) and the “SECP”, being regulator, shall facilitate them with regard to division of the Company and decide their matter arising out of mediation. The Court also appreciate the role of the “SECP”, its Chairman and Chief Prosecutor and the learned counsel for the parties including Mr. Nadeem Ahmad Sheikh, ASC and Barrister Osama Amin Qazi, who convened the meetings between the parties for intended mediation.

**(JAWAD HASSAN)
JUDGE**

APPROVED FOR REPORTING

JUDGE